Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

https://www.hrw.org/legacy/reports/1997/peru/

Policy Isssue Resources

December 1997 Vol. 9, No. 4 (B)

PERU
TORTURE AND POLITICAL PERSECUTION IN PERU

PERU
TORTURE AND POLITICAL PERSECUTION IN PERU

I. SUMMARY AND RECOMMENDATIONS

In the past few years, the human rights panorama in Peru has brightened considerably because of the decline in the massive "disappearances" and extrajudicial executions that has accompanied reduced political violence. Despite this positive trend, however, serious human rights violations continue, chief among them the use of torture. With the success of the Alberto Fujimori administration in substantially crippling the armed opposition groups' military capacity, counterinsurgency efforts are now conducted principally through a system of special anti-terrorism courts and military tribunals, backed by a ubiquitous intelligence apparatus. Institutionalized torture plays a key role in this system. Torture is also routine in the interrogation of suspects in cases of common crime. The army has even used torture against its own members who came under suspicion of endangering national security.

Although President Fujimori says that he does not condone torture, his administration has made no effort to curtail it. To the contrary, it has facilitated torture by weakening constitutional guarantees in wide areas of the country and by undermining the autonomy and effectiveness of government bodies established to protect constitutional rights. It has also failed to enact legislation that would designate torture as a distinct offense within the penal code carrying a commensurate level of punishment. It has attacked and intimidated the press for carrying stories critical of its human rights record.

The security forces continue to confront two armed opposition groups, the Communist Party of Peru-Shining Path (Partido Comunista del Per-Sendero Luminoso, PCP-SL), known as the Shining Path, and the Tpac Amaru Revolutionary Movement (Movimiento Revolucionario Tpac Amaru, MRTA), both of which consistently breach basic principles of international humanitarian law. The Shining Path commits selective assassinations of its civilian opponents and carries out indiscriminate attacks, killing and maiming civilians. The MRTA, on a lesser scale, has also resorted to executions and indiscriminate attacks, and has kidnaped civilians and taken them hostage for lucrative ransoms or to force the government into releasing imprisoned cadres. Both organizations have resorted to torture, usually as a prelude to execution.

The legal regime imposed to combat political violence facilitates torture. Detainees suspected of what Peruvian law defines as terrorist offenses may be held for up to fifteen days by the police before they are charged or released. Such detainees are usually handled by Peru's anti-terrorist police, the National Directorate Against Terrorism (Direccin Nacional Contra el Terrorismo, DINCOTE). DINCOTE may hold suspects incommunicado for up to ten days without a court order. Torture typically occurs on police premises while suspects are being held incommunicado and interrogated. It is used to extract signed declarations incriminating the victim and to obtain information. Reforms introduced in 1996 to safeguard detainees' rights while under interrogation, such as allowing them access to defense lawyers and requiring the presence of a public prosecutor when statements are taken, have not eliminated torture. Many detainees are tortured by military personnel before being handed over to the police. Public prosecutors also fail to supervise or monitor detention to protect the physical security of detainees. These abuses take place most frequently in "emergency zones," areas in which the police and army enjoy special powers under the emergency regulations to combat Shining Path or the MRTA. For instance, they can detain suspects and conduct searches without a warrant.

According to a study of cases by the Institute for Legal Defense (Instituto de Defensa Legal, IDL), one of the most important Peruvian non-governmental human rights groups, more than three out of four people accused of "terrorism" reported that they were tortured after arrest. When instances of torture come to light periodically, the government calls them isolated cases and assures the public that they will be investigated and punished. The record shows, however, that such pronouncements are usually hollow: torture cases are rarely punished. Although the compilation of comprehensive statistics is difficult, Peruvian human rights groups estimate that at least 95 percent of the torture cases they document go unpunished. Those responsible are only held accountable in special circumstances, such as when a case causes a public outcry, receives close press attention, or comes under the spotlight of international publicity.

The role of torture in the government's counterinsurgency strategies was demonstrated during the occupation of the residence of the

Japanese ambassador by the MRTA, which began on December 17, 1996. In March 1997, before army commandos broke into the building and released seventy-one hostages held by the guerrillas, the Peruvian army detained more than forty coffee growers in Alto Yurinaki, where they believed the MRTA guerrilla column responsible for the attack had originated. Over the next few days, the army reportedly tortured almost all of the detainees in an attempt to force them to incriminate themselves and their neighbors as members of the MRTA. The army variously beat them, submerged them in tanks of water, made them stand without food in the sun for hours, and shocked them with electricity. DINCOTE later ordered the release of all but one of the detainees for lack of evidence. Human Rights Watch/Americas, together with representatives of Peruvian human rights organizations, conducted investigations in the area of the arrests, interviewing released detainees or members of their families. The testimonies of former detainees, their relatives, village leaders, and provincial government authorities confirmed the systematic use of torture during this operation, and the failure of the legal regime in force to protect the physical integrity of the victims or to punish those responsible.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The

Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability

of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed

forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be

close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima

we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final

public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his

constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE

agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian*

state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no

incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

In the past few years, the human rights panorama in Peru has brightened considerably because of the decline in the massive "disappearances" and extrajudicial executions that has accompanied reduced political violence. Despite this positive trend, however, serious human rights violations continue, chief among them the use of torture. With the success of the Alberto Fujimori administration in substantially crippling the armed opposition groups' military capacity, counterinsurgency efforts are now conducted principally through a system of special anti-terrorism courts and military tribunals, backed by a ubiquitous intelligence apparatus. Institutionalized torture plays a key role in this system. Torture is also routine in the interrogation of suspects in cases of common crime. The army has even used torture against its own members who came under suspicion of endangering national security.

Although President Fujimori says that he does not condone torture, his administration has made no effort to curtail it. To the contrary, it has facilitated torture by weakening constitutional guarantees in wide areas of the country and by undermining the autonomy and effectiveness of government bodies established to protect constitutional rights. It has also failed to enact legislation that would designate torture as a distinct offense within the penal code carrying a commensurate level of punishment. It has attacked and intimidated the press for carrying stories critical of its human rights record.

The security forces continue to confront two armed opposition groups, the Communist Party of Peru-Shining Path (Partido Comunista del Per-Sendero Luminoso, PCP-SL), known as the Shining Path, and the Tpac Amaru Revolutionary Movement (Movimiento Revolucionario Tpac Amaru, MRTA), both of which consistently breach basic principles of international humanitarian law. The Shining Path commits selective assassinations of its civilian opponents and carries out indiscriminate attacks, killing and maiming civilians. The MRTA, on a lesser scale, has also resorted to executions and indiscriminate attacks, and has kidnaped civilians and taken them hostage for lucrative ransoms or to force the government into releasing imprisoned cadres. Both organizations have resorted to torture, usually as a prelude to execution.

The legal regime imposed to combat political violence facilitates torture. Detainees suspected of what Peruvian law defines as terrorist offenses may be held for up to fifteen days by the police before they are charged or released. Such detainees are usually handled by Peru's anti-terrorist police, the National Directorate Against Terrorism (Direccin Nacional Contra el Terrorismo, DINCOTE). DINCOTE may hold suspects incommunicado for up to ten days without a court order. Torture typically occurs on police premises while suspects are being held incommunicado and interrogated. It is used to extract signed declarations incriminating the victim and to obtain information. Reforms introduced in 1996 to safeguard detainees' rights while under interrogation, such as allowing them access to defense lawyers and requiring the presence of a public prosecutor when statements are taken, have not eliminated torture. Many detainees are tortured by military personnel before being handed over to the police. Public prosecutors also fail to supervise or monitor detention to protect the physical security of detainees. These abuses take place most frequently in "emergency zones," areas in which the police and army enjoy special powers under the emergency regulations to combat Shining Path or the MRTA. For instance, they can detain suspects and conduct searches without a warrant.

According to a study of cases by the Institute for Legal Defense (Instituto de Defensa Legal, IDL), one of the most important Peruvian non-governmental human rights groups, more than three out of four people accused of "terrorism" reported that they were tortured after arrest. When instances of torture come to light periodically, the government calls them isolated cases and assures the public that they will be investigated and punished. The record shows, however, that such pronouncements are usually hollow: torture cases are rarely punished. Although the compilation of comprehensive statistics is difficult, Peruvian human rights groups estimate that at least 95 percent of the torture cases they document go unpunished. Those responsible are only held accountable in special circumstances, such as when a case causes a public outcry, receives close press attention, or comes under the spotlight of international publicity.

The role of torture in the government's counterinsurgency strategies was demonstrated during the occupation of the residence of the Japanese ambassador by the MRTA, which began on December 17, 1996. In March 1997, before army commandos broke into the building and released seventy-one hostages held by the guerrillas, the Peruvian army detained more than forty coffee growers in Alto Yurinaki, where they believed the MRTA guerrilla column responsible for the attack had originated. Over the next few days, the army reportedly tortured almost all of the detainees in an attempt to force them to incriminate themselves and their neighbors as members of the MRTA. The army variously beat them, submerged them in tanks of water, made them stand without food in the sun for hours, and shocked them with electricity. DINCOTE later ordered the release of all but one of the detainees for lack of evidence. Human Rights Watch/Americas, together with representatives of Peruvian human rights organizations, conducted investigations in the area of the arrests, interviewing released detainees or members of their families. The testimonies of former detainees, their relatives, village leaders, and provincial government authorities confirmed the systematic use of torture during this operation, and the failure of the legal regime in force to protect the physical integrity of the victims or to punish those responsible.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and

those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as

desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and

twenty-five "disappearances" in 1994.[2] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[3] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[4]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[5]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[6] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective

jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two

days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the

legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the

provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military

procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme,

Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son

after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the

government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the

basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction,

except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the

Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319

and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru

(New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

Although President Fujimori says that he does not condone torture, his administration has made no effort to curtail it. To the contrary, it has facilitated torture by weakening constitutional guarantees in wide areas of the country and by undermining the autonomy and effectiveness of government bodies established to protect constitutional rights. It has also failed to enact legislation that would designate torture as a distinct offense within the penal code carrying a commensurate level of punishment. It has attacked and intimidated the press for carrying stories critical of its human rights record.

The security forces continue to confront two armed opposition groups, the Communist Party of Peru-Shining Path (Partido Comunista del Per-Sendero Luminoso, PCP-SL), known as the Shining Path, and the Tpac Amaru Revolutionary Movement (Movimiento Revolucionario Tpac Amaru, MRTA), both of which consistently breach basic principles of international humanitarian law. The Shining Path commits selective assassinations of its civilian opponents and carries out indiscriminate attacks, killing and maiming civilians. The MRTA, on a lesser scale, has also resorted to executions and indiscriminate attacks, and has kidnaped civilians and taken them hostage for lucrative ransoms or to force the government into releasing imprisoned cadres. Both organizations have resorted to torture, usually as a prelude to execution.

The legal regime imposed to combat political violence facilitates torture. Detainees suspected of what Peruvian law defines as terrorist offenses may be held for up to fifteen days by the police before they are charged or released. Such detainees are usually handled by Peru's anti-terrorist police, the National Directorate Against Terrorism (Direccin Nacional Contra el Terrorismo, DINCOTE). DINCOTE may hold suspects incommunicado for up to ten days without a court order. Torture typically occurs on police premises while suspects are being held incommunicado and interrogated. It is used to extract signed declarations incriminating the victim and to obtain information. Reforms introduced in 1996 to safeguard detainees' rights while under interrogation, such as allowing them access to defense lawyers and requiring the presence of a public prosecutor when statements are taken, have not eliminated torture. Many detainees are tortured by military personnel before being handed over to the police. Public prosecutors also fail to supervise or monitor

detention to protect the physical security of detainees. These abuses take place most frequently in "emergency zones," areas in which the police and army enjoy special powers under the emergency regulations to combat Shining Path or the MRTA. For instance, they can detain suspects and conduct searches without a warrant.

According to a study of cases by the Institute for Legal Defense (Instituto de Defensa Legal, IDL), one of the most important Peruvian non-governmental human rights groups, more than three out of four people accused of "terrorism" reported that they were tortured after arrest. When instances of torture come to light periodically, the government calls them isolated cases and assures the public that they will be investigated and punished. The record shows, however, that such pronouncements are usually hollow: torture cases are rarely punished. Although the compilation of comprehensive statistics is difficult, Peruvian human rights groups estimate that at least 95 percent of the torture cases they document go unpunished. Those responsible are only held accountable in special circumstances, such as when a case causes a public outcry, receives close press attention, or comes under the spotlight of international publicity.

The role of torture in the government's counterinsurgency strategies was demonstrated during the occupation of the residence of the Japanese ambassador by the MRTA, which began on December 17, 1996. In March 1997, before army commandos broke into the building and released seventy-one hostages held by the guerrillas, the Peruvian army detained more than forty coffee growers in Alto Yurinaki, where they believed the MRTA guerrilla column responsible for the attack had originated. Over the next few days, the army reportedly tortured almost all of the detainees in an attempt to force them to incriminate themselves and their neighbors as members of the MRTA. The army variously beat them, submerged them in tanks of water, made them stand without food in the sun for hours, and shocked them with electricity. DINCOTE later ordered the release of all but one of the detainees for lack of evidence. Human Rights Watch/Americas, together with representatives of Peruvian human rights organizations, conducted investigations in the area of the arrests, interviewing released detainees or members of their families. The testimonies of former detainees, their relatives, village leaders, and provincial government authorities confirmed the systematic use of torture during this operation, and the failure of the legal regime in force to protect the physical integrity of the victims or to punish those responsible.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years,

large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC

President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's

statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the

Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the

torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most

vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of

international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were

involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international

image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan

Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the

Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of

attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN,"

Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

The security forces continue to confront two armed opposition groups, the Communist Party of Peru-Shining Path (Partido Comunista del Per-Sendero Luminoso, PCP-SL), known as the Shining Path, and the Tpac Amaru Revolutionary Movement (Movimiento Revolucionario Tpac Amaru, MRTA), both of which consistently breach basic principles of international humanitarian law. The Shining Path commits selective assassinations of its civilian opponents and carries out indiscriminate attacks, killing and maiming civilians. The MRTA, on a lesser scale, has also resorted to executions and indiscriminate attacks, and has kidnaped civilians and taken them hostage for lucrative ransoms or to force the government into releasing imprisoned cadres. Both organizations have resorted to torture, usually as a prelude to execution.

The legal regime imposed to combat political violence facilitates torture. Detainees suspected of what Peruvian law defines as terrorist offenses may be held for up to fifteen days by the police before they are charged or released. Such detainees are usually handled by Peru's anti-terrorist police, the National Directorate Against Terrorism (Direccin Nacional Contra el Terrorismo, DINCOTE). DINCOTE may hold suspects incommunicado for up to ten days without a court order. Torture typically occurs on police premises while suspects are being held incommunicado and interrogated. It is used to extract signed declarations incriminating the victim and to obtain information. Reforms introduced in 1996 to safeguard detainees' rights while under interrogation, such as allowing them access to defense lawyers and requiring the presence of a public prosecutor when statements are taken, have not eliminated torture. Many detainees are tortured by military personnel before being handed over to the police. Public prosecutors also fail to supervise or monitor detention to protect the physical security of detainees. These abuses take place most frequently in "emergency zones," areas in which the police and army enjoy special powers under the emergency regulations to combat Shining Path or the MRTA. For instance, they can detain suspects and conduct searches without a warrant.

According to a study of cases by the Institute for Legal Defense (Instituto de Defensa Legal, IDL), one of the most important Peruvian non-governmental human rights groups, more than three out of four people accused of "terrorism" reported that they were tortured after arrest. When instances of torture come to light periodically, the government calls them isolated cases and assures the public that they will be investigated and punished. The record shows, however, that such pronouncements are usually hollow: torture cases are rarely punished. Although the compilation of comprehensive statistics is difficult, Peruvian human rights groups estimate that at least 95 percent of the torture cases they document go unpunished. Those responsible are only held accountable in special circumstances, such as when a case causes a public outcry, receives close press attention, or comes under the spotlight of international publicity.

The role of torture in the government's counterinsurgency strategies was demonstrated during the occupation of the residence of the Japanese ambassador by the MRTA, which began on December 17, 1996. In March 1997, before army commandos broke into the building and released seventy-one hostages held by the guerrillas, the Peruvian army detained more than forty coffee growers in Alto Yurinaki, where they believed the MRTA guerrilla column responsible for the attack had originated. Over the next few days, the army reportedly tortured almost all of the detainees in an attempt to force them to incriminate themselves and their neighbors as members of the MRTA. The army variously beat them, submerged them in tanks of water, made them stand without food in the sun for hours, and shocked them with electricity. DINCOTE later ordered the release of all but one of the detainees for lack of evidence. Human Rights Watch/Americas, together with representatives of Peruvian human rights organizations, conducted investigations in the area of the arrests, interviewing released detainees or members of their families. The testimonies of former detainees, their relatives, village leaders, and provincial government authorities confirmed the systematic use of torture during this operation, and the failure of the legal regime in force to protect the physical integrity of the victims or to punish those responsible.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the

judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly

prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[3] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[4]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[5]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[6] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on

Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the

disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public

duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law

must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights

Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of

higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in

plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon.

There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to

the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the

involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in

ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director;

Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

The legal regime imposed to combat political violence facilitates torture. Detainees suspected of what Peruvian law defines as terrorist offenses may be held for up to fifteen days by the police before they are charged or released. Such detainees are usually handled by Peru's anti-terrorist police, the National Directorate Against Terrorism (Direccin Nacional Contra el Terrorismo, DINCOTE). DINCOTE may hold suspects incommunicado for up to ten days without a court order. Torture typically occurs on police premises while suspects are being held incommunicado and interrogated. It is used to extract signed declarations incriminating the victim and to obtain information. Reforms introduced in 1996 to safeguard detainees' rights while under interrogation, such as allowing them access to defense lawyers and requiring the presence of a public prosecutor when statements are taken, have not eliminated torture. Many detainees are tortured by military personnel before being handed over to the police. Public prosecutors also fail to supervise or monitor detention to protect the physical security of detainees. These abuses take place most frequently in "emergency zones," areas in which the police and army enjoy special powers under the emergency regulations to combat Shining Path or the MRTA. For instance, they can detain suspects and conduct searches without a warrant.

According to a study of cases by the Institute for Legal Defense (Instituto de Defensa Legal, IDL), one of the most important Peruvian non-governmental human rights groups, more than three out of four people accused of "terrorism" reported that they were tortured after arrest. When instances of torture come to light periodically, the government calls them isolated cases and assures the public that they will be investigated and punished. The record shows, however, that such pronouncements are usually hollow: torture cases are rarely punished. Although the compilation of comprehensive statistics is difficult, Peruvian human rights groups estimate that at least 95 percent of the torture cases they document go unpunished. Those responsible are only held accountable in special circumstances, such as when a case causes a public outcry, receives close press attention, or comes under the spotlight of international publicity.

The role of torture in the government's counterinsurgency strategies was demonstrated during the occupation of the residence of the Japanese ambassador by the MRTA, which began on December 17, 1996. In March 1997, before army commandos broke into the building and released seventy-one hostages held by the guerrillas, the Peruvian army detained more than forty coffee growers in Alto Yurinaki, where they believed the MRTA guerrilla column responsible for the attack had originated. Over the next few days, the army reportedly tortured almost all of the detainees in an attempt to force them to incriminate themselves and their neighbors as members of the MRTA. The army variously beat them, submerged them in tanks of water, made them stand without food in the sun for hours, and

shocked them with electricity. DINCOTE later ordered the release of all but one of the detainees for lack of evidence. Human Rights Watch/Americas, together with representatives of Peruvian human rights organizations, conducted investigations in the area of the arrests, interviewing released detainees or members of their families. The testimonies of former detainees, their relatives, village leaders, and provincial government authorities confirmed the systematic use of torture during this operation, and the failure of the legal regime in force to protect the physical integrity of the victims or to punish those responsible.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the

armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros

was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen

days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the

CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to

attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and

held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe

that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed

that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's

advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public*

statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased

supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained

from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro,"

La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

According to a study of cases by the Institute for Legal Defense (Instituto de Defensa Legal, IDL), one of the most important Peruvian non-governmental human rights groups, more than three out of four people accused of "terrorism" reported that they were tortured after arrest. When instances of torture come to light periodically, the government calls them isolated cases and assures the public that they will

be investigated and punished. The record shows, however, that such pronouncements are usually hollow: torture cases are rarely punished. Although the compilation of comprehensive statistics is difficult, Peruvian human rights groups estimate that at least 95 percent of the torture cases they document go unpunished. Those responsible are only held accountable in special circumstances, such as when a case causes a public outcry, receives close press attention, or comes under the spotlight of international publicity.

The role of torture in the government's counterinsurgency strategies was demonstrated during the occupation of the residence of the Japanese ambassador by the MRTA, which began on December 17, 1996. In March 1997, before army commandos broke into the building and released seventy-one hostages held by the guerrillas, the Peruvian army detained more than forty coffee growers in Alto Yurinaki, where they believed the MRTA guerrilla column responsible for the attack had originated. Over the next few days, the army reportedly tortured almost all of the detainees in an attempt to force them to incriminate themselves and their neighbors as members of the MRTA. The army variously beat them, submerged them in tanks of water, made them stand without food in the sun for hours, and shocked them with electricity. DINCOTE later ordered the release of all but one of the detainees for lack of evidence. Human Rights Watch/Americas, together with representatives of Peruvian human rights organizations, conducted investigations in the area of the arrests, interviewing released detainees or members of their families. The testimonies of former detainees, their relatives, village leaders, and provincial government authorities confirmed the systematic use of torture during this operation, and the failure of the legal regime in force to protect the physical integrity of the victims or to punish those responsible.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega,

who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported

to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or

slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations

established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso,

Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa

case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the

secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The

ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on

local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with

its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

The role of torture in the government's counterinsurgency strategies was demonstrated during the occupation of the residence of the Japanese ambassador by the MRTA, which began on December 17, 1996. In March 1997, before army commandos broke into the building and released seventy-one hostages held by the guerrillas, the Peruvian army detained more than forty coffee growers in Alto Yurinaki, where they believed the MRTA guerrilla column responsible for the attack had originated. Over the next few days, the army reportedly tortured almost all of the detainees in an attempt to force them to incriminate themselves and their neighbors as members of the MRTA. The army variously beat them, submerged them in tanks of water, made them stand without food in the sun for hours, and shocked them with electricity. DINCOTE later ordered the release of all but one of the detainees for lack of evidence. Human Rights Watch/Americas, together with representatives of Peruvian human rights organizations, conducted investigations in the area of the arrests, interviewing released detainees or members of their families. The testimonies of former detainees, their relatives, village leaders, and provincial government authorities confirmed the systematic use of torture during this operation, and the failure of the legal regime in force to protect the physical integrity of the victims or to punish those responsible.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years,

large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC

President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's

statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the

Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the

torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most

vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of

international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were

involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international

image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan

Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the

Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of

attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN,"

Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

In early April the country was stunned by reports based on a television investigation that army intelligence officials had brutally tortured one of their own agents in the basement of army headquarters in Lima. Film shot secretly in the military hospital showed the fingers and ankles of the agent, Leonor La Rosa, inflamed and scarred from burns reportedly inflicted with a blowtorch. La Rosa had been under investigation after secret intelligence plans to intimidate journalists and members of the opposition were leaked to the press. The body of another agent, a colleague of La Rosa's, was discovered on a roadside north of Lima with its head and hands missing, after they had been severed apparently to avoid her identification.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega,

who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported

to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or

slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations

established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso,

Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa

case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the

secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The

ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on

local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with

its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

If Peru is to bring its counterinsurgency policy and crime fighting tactics into line with international human rights standards, it must introduce effective measures to combat torture and impunity. Although Peru is a signatory to international treaties against torture, neither its laws nor its practice meet the standards required by international law. For example, torture is still not classified as a specific crime in Peru. Cases of torture must currently be prosecuted as "battery," and the low penalties provided upon conviction are inappropriate given the gravity of the crime. More importantly, the government fails to ensure that complaints of torture are investigated adequately and those guilty held accountable.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained

her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a

judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week

after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker

Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the

public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have

infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on

March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present

during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred

on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed

that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's

advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public*

statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased

supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained

from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro,"

La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

The persistence of torture in Peru is attributable, in part, to the weakness and lack of independence of entities responsible for ensuring respect for the law and human rights. Despite repeated promises, President Fujimori has failed to restore fully the independence of the judiciary, shattered following the coup d'etat in 1992. Civilian judges still occupy provisional posts in many parts of the country, subject

to removal by a committee dominated by a government appointee. Fearful for their jobs, many judges are unwilling to challenge police misconduct and accept as evidence confessions extracted under torture, a practice that is explicitly banned under international law. Such confessions are also readily accepted by the special "faceless" courts and military tribunals that try persons accused of subversion and treason: the laws that govern these courts impose additional obstacles to judicial detection of torture by preventing members of the police who conducted interrogations from appearing for cross-examination.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee

Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[3] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[4]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[5]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[6] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable

by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional

status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police

discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus

ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to

challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in

the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a

few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess

told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered

respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to

a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May

23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol

drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November

26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone,

counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the

convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

Torture is committed with impunity. Few members of the military or police are prosecuted for abusing detainees unless the victim dies from the torture. Moreover, they are rarely prosecuted by impartial and autonomous courts. Instead, military courts assert jurisdiction in torture cases in which the accused are members of the armed forces. Convictions in military courts are rare, and when agents are convicted they are given sentences disproportionately light given the seriousness of the crime. Military courts also obstruct and refuse to cooperate with investigations and prosecutions of torture cases by civilian authorities.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years,

large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC

President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's

statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the

Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the

torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most

vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of

international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were

involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international

image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan

Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the

Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of

attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN,"

Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

Grave shortcomings in the effectiveness and independence of official monitoring bodies limit their ability to combat torture. In recent months, the ruling party, Change 90-New Majority (Cambio 90- Nueva Mayora, C90-NM), which has a substantial majority in congress, has striven to maintain control over institutions like the Public Ministry, which works within the Office of the Attorney General of the Nation to prosecute crimes, and the Constitutional Court, which monitors observance of the constitution. The office of the Attorney General, which is responsible for overseeing the independence of the courts and ensuring the correct administration of justice, has had key powers removed and transferred to a single official, a government appointee, who is known to be a close ally of the president. In April 1997, the attorney general came under personal attack by the armed forces for seeking to enforce habeas corpus rulings affecting military justice officials. In June 1997, three judges of the seven-member Constitutional Court were dismissed after an impeachment spearheaded by C90-NM, which assailed the judges for ruling that Fujimori's planned run for a second re-election was unconstitutional. The court was left barely functioning, and could not continue to act effectively as a forum for the protection of constitutional rights.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of

military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three

cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[2] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[3] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[4]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[5]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[6] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate

punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained.

The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of

military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who

granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the

troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of

numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on

September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she

had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a

bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a

Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second

week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being

hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has

increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to

protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading

treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

The news media, which in early 1997 played a vital role in spotlighting human rights abuses, including torture, suffered a welter of government reprisals in the months that followed. Journalists who had covered torture cases were victims of physical threats and intimidation and selective prosecution for alleged tax debts. Channel 2 television, known as Frecuencia Latina, which broadcast the sensational report on the torture of La Rosa, came under persistent attack for its critical reporting. The government attempted to intimidate the channel by subjecting it to an investigation for alleged evasion of tax or customs duty, a tactic also used against a radio station, a private clinic which had agreed to admit La Rosa, and one of the impeached Constitutional Court judges. Baruch Ivcher Bronstein, Frecuencia Latina's majority shareholder, a naturalized Israeli, was publicly denounced by the armed forces and later deprived of his Peruvian nationality on specious legal grounds in a crude attempt to silence the station. Finally, a court ordered that Ivcher relinquish control of Frecuencia Latina to its minority owners, provoking a walk-out by respected journalists.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega,

who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported

to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or

slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations

established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso,

Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa

case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the

secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The

ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on

local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with

its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

President Fujimori used his inaugural address at the annual General Assembly of the Organization of American States to launch barbed criticism of the press and attacked a daily opposition newspaper in television spots paid for by the Ministry of the Interior. These actions by government officials helped to create at atmosphere in which physical attacks against journalists appeared justified.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to

the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[6] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees

into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported

this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six

out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and

a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . .

."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was

beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas

walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to

protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a

commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B),

August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a

Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

The Defender of the People (Defensor del Pueblo), an ombudsman appointed by congress to protect and promote human rights, has managed to preserve his independence and has acted energetically in individual cases involving torture. Jorge Santistevan de Noriega, who heads the office of the Defender of the People, told Human Rights Watch/Americas of the commitment of his office to work toward major reforms that will benefit the treatment of detainees. Human Rights Watch/Americas welcomes this commitment and hopes that it will be backed by the full cooperation of the Peruvian government.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they

were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano,

PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going

against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of

Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who

were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be

determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique

recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers

as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing

public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the

extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of

the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going

to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving

death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

So far, while declaring its opposition to torture, the government has failed to take measures to stop it, although the extent of the practice has been amply documented by the international bodies that monitor compliance with the human rights treaties that Peru has signed. The Alto Yurinaki cases, documented in this report's fifth chapter and widely covered in the press, led to an assurance by Fujimori that allegations of torture would be investigated. Despite their gravity and credibility, no investigation was carried out. Although four officers allegedly responsible for the torture of Leonor La Rosa were tried and convicted by a military court, the victim was held incommunicado, harassed, and threatened. Politically motivated assaults on the independence and effectiveness of institutions such as the civilian judiciary and the attorney general's office have weakened their ability to serve as a bulwark against abuses by the police and the armed forces. In short, the government has treated human rights as an inconvenient encumbrance in the way of government policy; instead it must treat them as a central political objective.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and

sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases

registered by the organization over the years.[3] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[4]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[5]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[6] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on

Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would

encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are

committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus

ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to

challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in

the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a

few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess

told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered

respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to

a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May

23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol

drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November

26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone,

counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the

convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

Recommendations to the Peruvian Government:

The government should begin an immediate campaign to end the use of torture by Peruvian security forces. Warnings should be issued through the chain of command that officers or personnel involved in torture or ill-treatment of detainees will be strictly sanctioned and denounced to the public prosecutor.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal

courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the

death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a

prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came

into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the

paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed

the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was

designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing

public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the

extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

1. Those who died during the assault included two members of the security forces and a respected Supreme Court judge, Dr. Carlos Giusti Acua.

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of

the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going

to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving

death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

The government should institute an immediate and impartial investigation into the use of torture in Alto Yurinaki in March. Military personnel responsible for torture and those responsible for the operation during which it occurred should be disciplined and prosecuted. The results of the inquiry should be made public, and compensation and an official apology should be provided to the victims.

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and

prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal

proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water

mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency

operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The crime of torture should be individually and specifically included in the Penal Code with penalties appropriate to its seriousness.

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member

of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization.

Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta

case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The

army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite

the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the

following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the

DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases

discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court

order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by

the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner

wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been

done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The People's Defender should make recommendations to the government aimed at clarifying the legal limits of the jurisdiction of military courts. Military jurisdiction should be limited to military offenses, that is those that affect solely military values, such as desertion and disobedience. Crimes such as torture, even when committed by military personnel against military personnel, or on military premises, should be dealt with exclusively by civilian courts.

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM

must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic

Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they

told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were

waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Although the armed forces lack authority to conduct interrogations of civilian suspects, they regularly do so. This should be clearly prohibited, and those who breach the prohibition should be sanctioned.

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[6] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually

unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993,

108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the

Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They

pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics

who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues,

so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the

indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly

magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was

killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Office of the Attorney General of the Nation should take measures to improve the vigilance of provincial prosecutors in preventing the occurrence of torture, and prosecutors who fail to attend interrogations and searches should be disciplined and sanctioned.

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member

of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization.

Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta

case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The

army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite

the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the

following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the

DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases

discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court

order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by

the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner

wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been

done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The powers of faceless courts and military tribunals to try terrorism cases should be terminated and transferred to ordinary criminal courts. While courts should be guaranteed the necessary powers to try terrorist suspects effectively, such trials should always be conducted with full respect for the right of defense and the presumption of innocence.

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas,

La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A

bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police

personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in

October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May

6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the

hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge,

absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours

of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court

handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been

induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas

under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that

cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Current periods of incommunicado detention should be drastically reduced, and suspects should be placed under incommunicado detention only on the express instructions of the investigating judge. Judges must strictly supervise incommunicado detention to prevent illtreatment and should impose incommunicado detention only when strictly necessary to protect the investigation.

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of

provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law

and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus

rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included

the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The

detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body

with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful

prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old

La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The government should investigate thoroughly and impartially the abductions and violent attacks on members of the press, politicians, and other public personalities documented in this report. Those responsible for these crimes should be prosecuted and punished.

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the

opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically

reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the

impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television

interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As

noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The

subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority"

under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published

damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving

Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary*

destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

A permanent parliamentary mechanism, such as a multi-party commission, should be established for an effective and impartial review of the activities of the intelligence services, to ensure that their work is conducted with full respect for political and civil rights.

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her

incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the

right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the

journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar,

CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were

forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at

the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother

that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been

among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller

rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The government should immediately restore unimpeded access to Peruvian prisons, detentions centers, and military installations to the

International Committee of the Red Cross (ICRC). ICRC access can be an important impediment to the torture or ill-treatment of detainees.

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996

involving soldiers stationed in or near Tocache, in the department of San Martn.[7]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In

the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are

interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Recommendations to the Shining Path and MRTA:

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the

opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically

reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the

impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television

interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As

noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The

subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority"

under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published

damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving

Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary*

destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Shining Path and MRTA should reject categorically all actions that violate humanitarian law, including summary executions, indiscriminate attacks, hostage-taking, and torture.

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount

raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to

eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned

as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military

interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops

around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local

hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for

her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)]

Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the

leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international

jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Recommendations to the United States:

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an

independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has

continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the

police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after

the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court

granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview

after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some

villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth.

Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court

order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by

the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner

wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been

done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Clinton administration should suspend all assistance to Peru's National Intelligence Service, which has reliably been reported to be involved in numerous human rights violations, including a campaign of harassment of the press and illegal phone-tapping. The United States should publicly distance itself from the SIN's de facto chief, Vladimiro Montesinos, who is widely perceived in Lima to enjoy Washington's support.

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be

tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the

31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force

him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present

when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was

regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police

asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the

SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a

campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in

cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The administration should seek support from other members of the United Nations for the assignment of a special rapporteur or an independent expert to monitor and publicly report on the human rights situation in Peru.

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations

that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The

military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in

Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a

blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of

detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless

opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military

intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

II. THE PREVALENCE OF TORTURE

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations

that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The

military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in

Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a

blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of

detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless

opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military

intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Scope of Torture

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens

the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the

jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public

Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to

reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw

himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations.

According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority

of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military

officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and

troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who

promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so

because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's

residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Government forces rely heavily on torture and other human rights abuses in their efforts to defeat and dismantle the armed opposition groups, Shining Path and the MRTA. Although substantially weakened and consequently less active, both groups continue to mount raids, ambushes, bombing attacks, and political assassinations. Most of these are carried out by Shining Path in the jungle region of the Alto Huallaga, where the organization has its stronghold.

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government

may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the

fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988,

including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and

overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to

the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are

normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On December 17, 1996, MRTA guerrillas entered the residence of the Japanese ambassador in Lima during an official reception, occupied the building, and for almost four months held seventy-two hostages, including government ministers, judges, and foreign diplomats. Protracted negotiations to secure their release and a peaceful solution of the crisis became deadlocked. On April 22, army and police commandos stormed the building, released the surviving hostages, and killed all of the guerrillas.[(1)]

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of

DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist

law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and

independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that

army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human

Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in

plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19,

she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered

on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax

debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to

abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported

that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

A notable reduction in the number of extrajudicial executions and "disappearances" has accompanied the decline in the levels of political violence. In its 1996 annual report, the National Human Rights Coordinator (Coordinadora Nacional de Derechos Humanos, Coordinadora), an umbrella group that includes forty-seven nongovernmental human rights groups, documented three cases of extrajudicial execution and three "disappearances" in 1996, compared with thirty-eight extrajudicial executions and twenty-five "disappearances" in 1994.[(2)] By November, 1997, Peruvian human rights groups had documented no new cases of extrajudicial executions or "disappearances" during the year, promising to make 1997 the first year free of such abuses for more than a decade.

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM

must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic

Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they

told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were

waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Despite these improvements, however, the torture of detainees remains pervasive. The Coordinadora has documented a persistent pattern of torture and ill-treatment of detainees across the entire country. In a report submitted to the United Nations Committee Against Torture (CAT) in April 1997, it presented information on thirty-one selected cases, a small proportion of the cases registered by the organization over the years.[(3)] The cases documented occurred in the departments of Hunuco, San Martn, Ucayali, Cajamarca, Ayacucho, Amazonas, La Libertad, and Lima. Among the most seriously affected were Hunuco, San Martn, and Ucayali.

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people

between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture.

In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including

the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of

Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten

with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident.

The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a

number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its

independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while

the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

According to data compiled by the IDL, an important Peruvian human rights organization that has provided legal representation to prisoners unjustly accused of terrorism, 78.2 percent of these male prisoners -- almost four out of every five -- reported that they were subjected to torture or ill-treatment after their detention. The figure for women is only slightly lower: 70.6 percent. Just over half the men who reported being tortured (51.3 percent) alleged that the abuse took place in detention centers run by DINCOTE, while 18.8 percent say they were tortured while in a military base. More than a quarter of the tortured men said they had been beaten, and an additional 16.3 percent said they had been tortured more than once. The second-most-common type of torture after beatings was water torture, known as the *submarino*, which consists of repeated immersion of the head in water sometimes laced with chemicals such as household detergent. Rape was the second-most-common form of torture reported by women prisoners (8.5 percent), after beatings.[(4)]

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has

continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the

police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after

the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court

granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview

after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some

villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth.

Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court

order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by

the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner

wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been

done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In 1995, the Center for Studies and Action for Peace (Centro de Estudios y Accin por la Paz, CEAPAZ) carried out a survey of people between fifteen and eighteen years old who had been charged with or convicted of a terrorist offense and who were in a prison or juvenile detention center. They found that out of a sample of 128 adolescents, eighty-three -- 65 percent -- said they had been ill-treated during pre-trial detention. Sixty people -- 47 percent -- said they had been tortured.[(5)]

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals,

among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the

armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991,

has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress

against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked

repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and

"disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the

so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to

an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was

driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.(126)

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.(127)

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.(128) *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.(129)

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.(130) On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"(131) Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.(132)

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.(133) Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.(134)

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.(135)

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.(136) The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same

ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro

Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Torture is reported with the greatest frequency in regions of the country controlled by the military under state-of-emergency regulations.[(6)] In recent years, some military bases in particular have acquired notoriety as places of systematic torture. Such was the case in 1995 and 1996 with the Marine bases of Huipoca and Aguayta, in the province of Pucallpa. Several cases were reported in 1996 involving soldiers stationed in or near Tocache, in the department of San Martn.[(7)]

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common types of torture practiced by army intelligence officials there.[(8)] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic

condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those

released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative

foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when

these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were

interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher

education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which

continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the

intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been

among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller

rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In 1994, an officer who had worked in several army bases in the Alto Huallaga region explained to the Coordinadora the most common

types of torture practiced by army intelligence officials there.[8] He described seven common techniques:

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such

abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President

Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal

proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water

mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency

operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The "grill:" the detainee is made to stretch out on a metal bed frame to which electric cables have been connected. The victim is tied with a wire to the frame and doused with water while electric current is applied.

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until

the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which

clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches

of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked

repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and

"disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the

so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to

an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was

driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same*

ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[141] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[142] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[145] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[148] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro

Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The "submarine:" the detainee is introduced head-first into a tank of water, with his hands and feet tied.

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal

law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the

danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction

and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional

judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial

prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The "rag:" the detainee is made to lie on his back with his hands and feet tied. His head is covered with a wet towel and water is poured on top his head, half-drowning him.

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her

incommunicado.[9]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[10] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[11] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[12] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[13] or "abuses of authority".[14] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[15] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[16] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[17]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[18] the American Convention on Human Rights,[19] and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the

right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the

journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar,

CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were

forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at

the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother

that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been

among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller

rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The "stick:" a stick is introduced into the anus, or in the case of women, the anus and vagina.

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of

provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law

and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus

rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included

the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The

detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body

with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful

prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old

La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The "brawl:" the detainee is tied up and forced to lie on the floor while being beaten by at least ten soldiers until he loses consciousness.

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such

abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President

Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal

proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water

mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency

operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

"Hanging:" the detainee is hung by his forearms or wrists, after towels have been tied around them to avoid leaving marks.

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by

the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered

in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics

who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues,

so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the

indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly

magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was

killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The "magneto:" electricity is applied to the testicles.

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals,

among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the

armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991,

has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress

against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked

repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and

"disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the

so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to

an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was

driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same*

ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro

Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

While in recent years most reports of torture have implicated members of the armed forces in emergency zones, torture by DINCOTE has continued. DINCOTE, jointly with the Marines detained Fulberto Marceliano Cuadros Snchez, Luz Delicia Guadalupe Collantes and Silvia Ins Quintana Leyva on January 17, 1996 during a raid on a shantytown in Callao, Lima. Cuadros was accused of being a member of the Shining Path after the two women were forced under torture with beatings and electricity to incriminate him. Members of DINCOTE are alleged to have raped Nancy Patruska Del Campo Cceres, aged 23, after they detained her on May 7, 1997 and held her incommunicado.[(9)]

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in

which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the

Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of

congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more

detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers

filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the

Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the

others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and

tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In

addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties

ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by

authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Legal Prohibition of Torture

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in

custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he

discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the

Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of

congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more

detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers

filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the

Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the

others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and

tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In

addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties

ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by

authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Military personnel and the police face few internal or external constraints to the use of torture in interrogating suspects: torture is not codified as a distinct offense; emergency powers facilitate its use; military court jurisdiction over members of the military or police encourages impunity; monitoring institutions have been weakened and compromised.

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set

the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military

officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the

impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television

interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As

noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The

subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority"

under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published

damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving

Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary*

destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

As a party to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture), Peru is obligated to "ensure that all acts of torture are offences under its criminal law"[(10)] and to "make these offences punishable by appropriate penalties which take into account their grave nature."[(11)] Peru has failed to do so. Peru's Constitution of 1993 prohibits torture,[(12)] but torture is not codified as a specific offence within the penal code. Under Peru's criminal law, acts of torture can only be prosecuted as violations of more generic crimes such as "battery"[(13)] or "abuses of authority".[(14)] Neither reflects the nature or gravity of torture, nor were the relevant laws written to provide commensurate punishment for cases of torture.

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)]

and the Inter-American Convention to Prevent and Punish Torture.[20] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as

informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a

torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were

diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police

investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo

Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence

service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired.

Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the

Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint.

There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place

in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the*

State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

International authorities have repeatedly urged Peru to adopt specific legislation criminalizing acts of torture. In February 1994, the government submitted its first report to the CAT established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor states' compliance.[(15)] Following the hearing in Geneva on Peru's report, the CAT expressed profound concern about the extent of torture in Peru and the impunity enjoyed by the perpetrators. It recommended in 1995, ". . . consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness."[(16)] The United Nations Rapporteur on Torture, Nigel S. Rodley, noted in his report on Peru in January 1996 that "the new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation even repealed provisions punishing unlawful harassment and coercion."[(17)]

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations

that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The

military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in

Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a

blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of

detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless

opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military

intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Peruvian legislators have long been aware of the need for legislation on torture. In April 1996, public concern provoked by the death in custody of Mario Palomino Garca (see section VI of this report) led to the presentation to Congress of several bills to outlaw torture. A bill proposed by congressman Antero Flores Aroz of the Popular Christian Party, (Partido Popular Cristiano, PPC) on April 11, 1996, set the penalty for torture resulting in death at a minimum of twenty years' imprisonment. Another proposal by Carlos Chipoco of the opposition Union for Peru (Unin por el Per, UPP) addresses torture together with other grave human rights crimes such as enforced "disappearances." These proposals have remained dormant since they were introduced a year ago. A sense of urgency did not return until the airing of the television interview of tortured army intelligence agent Leonor La Rosa in April 1997. Soon after, the congressional Justice Commission began debating a proposal drafted by a working group of lawyers and based on the Flores and Chipoco proposals, among others. As of this writing, however, the final text of an anti-torture bill has not been agreed upon.

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part of Peru's domestic law.[(21)]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts

had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose

dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was

illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the

statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha

indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el

Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home,

he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack

on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military

Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and

human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In addition to the Convention against Torture, Peru has also ratified several other international human rights instruments that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR),[(18)] the American Convention on Human Rights,[(19)] and the Inter-American Convention to Prevent and Punish Torture.[(20)] Under Peru's constitution, international treaties in force form part

of Peru's domestic law.[21]

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[22]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[23]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[24] and the "treason law" of August 1992.[25] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[26]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[27] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki,

army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the

Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of

Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten

with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident.

The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a

number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its

independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while

the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

III. THE INSTITUTIONAL CONTEXT: WEAKENED SAFEGUARDS AGAINST TORTURE

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August

1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over

some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of

jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress

members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly

dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had

stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the

interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean

armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Continuing Use of Emergency Powers

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be

tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the

31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force

him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present

when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was

regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police

asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the

SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a

campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in

cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The torture of suspected guerrillas or collaborators occurs within a framework of counterinsurgency measures that both facilitate such abuse and shelter it from discovery or sanction. Despite the notable reduction of guerrilla activity over the last three years, large regions of the country remain effectively under military rule. More than a fifth of the population is still governed under emergency regulations that place civilian authorities under military command and suspend certain civil rights and freedoms guaranteed under Peru's constitution, such as the right not to be detained without a written warrant, freedom of movement and assembly, and the inviolability of the home. Under international law, the government may legitimately maintain these regulations only in times of "public emergency which threatens the life of the nation. . . ."[(22)]

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the

armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991,

has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress

against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked

repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and

"disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the

so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to

an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was

driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.(126)

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.(127)

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.(128) *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.(129)

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.(130) On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"(131) Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.(132)

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.(133) Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.(134)

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.(135)

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.(136) The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same

ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro

Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In many zones still under emergency regulations, the current level of political violence does not pose such a grave threat as to warrant the suspension of civil rights and individual guarantees. Even where security conditions may justify emergency measures, the government may not interfere with the enjoyment of non-derogable rights, such as freedom from torture. While it is true that mechanisms to protect individual rights and ensure the accountability of military and police personnel, like habeas corpus and the monitoring responsibilities of provincial prosecutors, remain formally in force, in practice they function much less effectively when civilian authorities are subject to military command. The reduced efficiency of these mechanisms increases the vulnerability of the population at large to violations of non-derogable rights by greatly restricting the possibility of legal redress.[(23)]

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM

must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic

Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they

told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were

waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The police possess expanded powers to investigate suspects and formulate charges under the "antiterrorism law," announced in May 1992,[(24)] and the "treason law" of August 1992.[(25)] Detainees suspected of offenses under these laws may be held for fifteen days by the police before being placed at the disposal of a judge, whereas ordinary detainees may be held only for twenty-four hours. In addition, the police have powers to place detainees in incommunicado detention for up to ten days without requiring a judge's authorization. Interrogation of suspects during the lengthy period of incommunicado detention is routinely accompanied by torture. The antiterrorist law established "faceless" courts in which the identities of the judges, prosecutors and prosecution witnesses were kept secret and the right to defense was restricted; those accused under the "treason law" were tried by faceless military tribunals using summary procedures that restrict rights related to legal defense even more severely. These courts routinely accepted coerced confessions as evidence. On October 15, 1997, the government terminated the mandate of the faceless courts, which had attracted international as well as domestic condemnation for their denial of due process and the right of defense. During the five-and-one-half years of their existence these courts had convicted more than a thousand people for security-related offenses, hundreds of whom are believed to be innocent of any connection with terrorist groups and remain in jail.[(26)]

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the

antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most

elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas

corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in

Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly

dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had

stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the

interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean

armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In response to domestic and international criticism, in 1995 the Fujimori government had already modified Peru's antiterrorist laws to eliminate some of their most criticized aspects.[(27)] Decree Law 26248 restored the right to habeas corpus to people detained under the antiterrorism laws, which had been suspended under Decree Law 25659. The suspension was in force for fifteen months, from August 1992 until November 1993. Law 26447 restored the right of prisoners to have access to a lawyer from the moment of detention and requires the presence of a prosecutor during interrogations to ensure that the police respect legal procedure. This measure limited the impact of incommunicado detention, although the prohibition of visits by family and relatives was maintained. The law also lessened the danger of children being tortured, by increasing the age at which children might be tried for terrorist offenses from fifteen to eighteen years of age.

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM

must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic

Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they

told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were

waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

These reforms were an effort to defuse criticism of Peru's counterinsurgency policy, and they do not eliminate conditions that facilitate torture. DINCOTE, for example, is still empowered to hold suspects for up to fifteen days before putting them at the disposal of a judge and prison facility. DINCOTE, not the judge or prosecutor, decides whether or not to hold prisoners incommunicado, and may still do so for periods of up to ten days. Many judges and prosecutors continue to have only provisional status and may be removed by a committee controlled by a government appointee, thus lacking the guarantees of tenure that would encourage them to confront the army or the police in individual cases. Some prosecutors do not appear to understand the importance of their role as guarantors of due process or are afraid to exercise it effectively. This is evident from the numerous cases documented in this report, for example, in which detainees insist that the prosecutor was not present during their interrogation, as required by law, even though the prosecutor signed at the bottom of the suspect's statement. In one case, a prosecutor was persuaded by army interrogators to don a military uniform to witness a procedure in which a suspect was called on to "recognize" a stockpile of weapons; by appearing before the detainee in military uniform, he discouraged the suspect from going against the orders of his interrogators.

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[28] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[29] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[30]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which

clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches

of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked

repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and

"disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the

so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to

an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was

driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.(126)

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.(127)

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.(128) *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.(129)

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.(130) On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"(131) Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.(132)

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.(133) Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.(134)

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.(135)

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.(136) The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same

ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro

Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

One provision of the antiterrorist law that has not been modified expressly forbids the questioning in court of the police or military officials who participated in the interrogation of the suspect. Introduced to protect the security of police personnel, this rule drastically reduces the opportunities of the defense to prove irrregularities in the conduct of interrogations and searches, or to confront police interrogators with evidence of torture.

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be

tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the

31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force

him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present

when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was

regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police

asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the

SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a

campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in

cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Military officials continue to violate the strict legal limitations on their powers of arrest and interrogation. According to Law 25475, the armed forces may, in exceptional cases, detain terrorist suspects in areas only where there is no police presence, but they are required to hand them over to the nearest police station immediately. The armed forces are *not* authorized to interrogate suspects, carry out searches, confront witnesses, or perform any other investigative function.[(28)] However, they do so frequently. In the case of Alto Yurinaki, documented in this report, the army captured suspects, held them for up to five days, interrogated them, tortured them and used them as informers while combing the area for more suspects to arrest. When the detainees were finally handed over to DINCOTE in Pichanaki, army officers were present in the police station and tried to intimidate the detainees into ratifying what they had declared under torture. In some cases documented by the IDL, judges in faceless courts discounted confessions after finding that military personnel had interrogated and tortured the suspects into confessing to actions that they subsequently denied when later questioned--without torture--by the police or the prosecutor.[(29)] However, cases in which judges subsequently opened a prosecution against the torturers are virtually unknown.[(30)]

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and

sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM

must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic

Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they

told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were

waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Denial of ICRC Access

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real

purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[31]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military

justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January

1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and

overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to

the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are

normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Since the December 17, 1996 takeover of the Japanese ambassador's residence in Lima by the MRTA, the Peruvian government has suspended its agreement, negotiated in early 1993, whereby the International Committee of the Red Cross was granted regular and prompt access to all detainees held on suspicion of politically motivated crimes in Peru. President Fujimori rebuffed ICRC President Cornelio Sommaruga, who visited Lima in August 1997 in an effort to have the humanitarian organization's access restored.

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military

and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to

declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have

constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water

torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal

would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his

vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to

contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel

Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army

hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality,

which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking

information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.*[*(137)*]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights

abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Visits by the ICRC, which communicates its findings privately to the government responsible, have proven effective in reducing the incidence of ill-treatment, including torture and the forcible "disappearance" of detainees. The continued denial of ICRC access underlines the government's profound disregard for the rights of detainees.

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction

and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional

judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial

prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Effects of the 1995 Amnesty Law

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report. This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the

journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar,

CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were

forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at

the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother

that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been

among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller

rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The effects of President Fujimori's amnesty law, promulgated in June 1995, fall like a shadow over the issues discussed in this report.

This law granted amnesty to all military or police personnel and civilians convicted or implicated in human rights violations during the fifteen-year counterinsurgency war, which started in 1980. While it was defended by the government as a pacification measure, its real purpose was to prevent criminal investigations into the grave human rights violations committed by the armed forces and police. The law and a subsequent one intended to make it impossible to challenge the amnesty in the courts, were universally lamented by inter-governmental human rights bodies, including the United Nations Human Rights Committee, the U.N special rapporteur on extrajudicial, summary and arbitrary executions, the U.N. special rapporteur on the independence of judges and lawyers, and the Chairman of the U.N.'s Working Group on Enforced or Involuntary Disappearances.[(31)]

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988,

including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and

overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to

the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are

normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The deleterious effects of laws designed to sacrifice accountability for political stability have been well illustrated in Peru. A week after the passage of the law, eight members of the Colina Group, an army intelligence death squad who had been convicted and imprisoned for the abduction and murder of five students and a teacher from the Enrique Guzmn del Valle University--known as the La Cantuta case--were released. Since that date, abductions, death threats, and harrassment directed against known opposition leaders, lawyers, and independent journalists have escalated, and for many of these incidents the Colina group is believed to be responsible. Many of the journalists targeted had investigated the La Cantuta case, and the lawyers had assisted relatives of other Colina victims in their search for justice. In addition, army intelligence officers have targeted and tortured intelligence agents suspected of leaking data to the press about this campaign of intimidation against journalists. Former army Maj. Martn Rivas, the commander of the Colina group and one of those released under the amnesty law, has emerged as the major suspect in the murder of Mariela Barreto, a former intelligence agent whose dismembered body was found on a road outside Lima in March 1997, as described below.

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa

cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-

attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released

detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and

then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and

when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority

of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military

officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and

troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who

promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so

because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's

residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Military Justice

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988,

including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and

overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to

the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are

normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Another factor contributing to impunity in torture cases is the ability of the police and the military to exploit ambiguities in the current definition of the spheres of civilian and military justice, and to insist on trying their own members in military courts that lack the most elementary guarantees of independence and autonomy. Article 173 of the Constitution establishes the jurisdiction of military courts over some crimes committed by members of the armed forces and the National Police:

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court

granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview

after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some

villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth.

Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court

order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by

the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner

wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been

done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

In case of a function-related crime, the members of the Armed Forces and the National Police are subject to their respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians except in the case of the crimes of treason and terrorism as determined by the law.

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned

as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military

interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops

around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local

hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for

her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)]

Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the

leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international

jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The National Police, as well as the armed forces, possess their own structure of tribunals that adjudicate breaches of police discipline and sanction offenders. However, these tribunals frequently also assert jurisdiction over common crimes when they are committed by police on active service or on police premises. Thus, in cases of torture or other abuses of civilians by military or police personnel, the police or military justice authorities often assert exclusive military jurisdiction, and the accused is placed under the jurisdiction of the Supreme Military Justice authority. From then on, military prosecutors and judges frequently ignore orders from their civilian counterparts who seek access to detainees.

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of

Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[32]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[33] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[34] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[35] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[36] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that

justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those

who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the

way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he

asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle

handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the

inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In

many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government

against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had

arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett

recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The legal definition of the crucial concept of a function-related crime (*delito de funcin*) is set out in Article 14 of the 1991 Code of Criminal Procedure, according to which:

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[37]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained

arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to

get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client,

viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the

authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government,

demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and

mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Military justice is limited to those crimes that are directly linked to military or police functions, in that they affect juridical values that are exclusively military and the disciplinary order of the Armed Forces or National Police. In these cases the military and police personnel are subjected to their respective jurisdiction and to the Code of Military Justice.[(32)]

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The

army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite

the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the

following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the

DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases

discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court

order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by

the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner

wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been

done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

The norm states clearly that the classification of a crime as function-related depends on whether the value affected is exclusively military or not. Torture, the deliberate infliction of physical and mental suffering, affects a juridical value--the integrity of the person--which clearly transcends the purely military sphere.[(33)] Unfortunately, the Code of Penal Procedure, although approved by Congress in 1991, has never been put into practice.[(34)] A bill to reform the code that has been presented to congress excludes any definition of the concept of a function-related crime.[(35)] Recent cases confirm that military thinking is miles apart from the definition in the 1991 code. Military and police believe that torture, if practiced by an officer on duty and on army or police property is properly a function-related crime, even though the offended party is a civilian. The courts have frequently supported this view. When civilian and military courts investigating a torture case both claim jurisdiction, either of them may appeal to a higher court for a ruling to decide competence, and ultimately the Supreme Court must resolve the dispute. The Supreme Court has consistently passed human rights cases to military courts,[(36)] including the best-known case of all, the La Cantuta disappearances. As Human Rights Watch/Americas noted in 1995,

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of

the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope

her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees,

including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the

others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and

tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In

addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties

ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by

authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 non-commissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said, twenty-eight officers and 151 non-commissioned officers had been given prison terms.

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense

lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base

at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until

about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture

laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the

civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del

Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public

of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was

already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks

where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are

associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.[(37)]

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of

Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten

with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident.

The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a

number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its

independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while

the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Until the moment a jurisdictional dispute is definitively resolved, it is common for investigations of torture cases to be heard in parallel in both civilian and military courts, as occurred for example, in both the Chamaya and La Rosa cases, analyzed in this report. The military judicial authorities commonly hamper the civilian investigation, by ignoring or delaying responses to court orders for access to defendants and witnesses. Since military and police tribunals use summary procedures and can speed up or slow down trials at their discretion, they may pre-empt a decision by the civilian court by reaching a rapid verdict, as occurred in both the Chamaya and La Rosa cases, detailed below. Despite the verdict, the case continues in the civilian court until it reaches the Supreme Court for a ruling on the jurisdictional dispute, and in such cases the Supreme Court has almost invariably ruled in favor of the military. One of the main arguments the court uses is that a verdict by the civilian court would create double jeopardy, violating a basic due process right not to be tried twice for the same offense.

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[(41)]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the

military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term,

but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they

told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were

waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Habeas corpus writs have been another source of conflict between the attorney general and individual judges on one side and military justice authorities on the other. Disturbingly, in some decisions in which the the duty of the military to comply with habeas corpus rulings was at stake, the Supreme Court supported the military courts, and threatened to prosecute judges who had defended individual guarantees.

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[(38)] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[(39)] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[(40)] The CSJM's impeachment initiative

foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when

these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were

interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher

education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which

continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the

intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been

among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller

rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In December 1996, the Chamber of Public Law of the Higher Court of Lima ordered military judges to allow drug-trafficker Demetrio

Chvez Peaherrera (alias El Vaticano), convicted by a military court to thirty years' imprisonment for treason, access to his defense lawyer. Military justice authorities refused to comply, on grounds of national security.[38] In another case, the same civilian court granted a writ of habeas corpus on behalf of Capt. Gustavo Celsi Hurtado, formerly of the army, an insurance broker accused of appropriating $1,050,000 from an army account, on the grounds that Celsi was retired and his actions fell under civilian jurisdiction. The army refused to release Celsi, and a military court later sentenced him to four years' imprisonment.[39] In response, Aljovn ordered that army Gen. Guido Guevara Guerra, the president of the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar, CSJM), be prosecuted for abuse of authority, violence, and resisting authority. In a crude retaliation, the CSJM announced that it was opening impeachment proceedings against Aljovn for "obstructing the judicial function" and "abuse of authority." Guevara announced that henceforward no military judge would respond to any summons issued by a civilian court.[40] The CSJM's impeachment initiative foundered on lack of parliamentary support, even among legislators of proven loyalty to the government. Nevertheless, the episode was illustrative of the military's view of their courts as being wholly autonomous of the civilian judiciary, despite a constitutional principle that justice is single and unified.[41]

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[42] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[43] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[44] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[45]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were

eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them

reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the

investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for

five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000

soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was

already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks

where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are

associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The CSJM also made a formal complaint to the judiciary's disciplinary body against Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Vsquez, three judges of the Public Law Chamber of the Lima Superior Court who granted habeas corpus petitions in the Robles[(42)] and Cesti cases, as well as others, accusing them of "dangerous interference" in the military's sphere of jurisdiction. On June 26, a Supreme Court panel removed the three judges from their posts on the court, after having received authorization to make appointments to the court from the Executive Commission of the Judiciary only two days previously.[(43)] The legal action pursued by the attorney general against the CSJM was heard by a temporary panel of the Supreme Court, staffed by provisional judges, who ruled that there was no basis on which to charge the military justice authorities and instead called for the three judges responsible for the habeas corpus rulings to be charged themselves with breach of public duty (*prevaricato*). The panel also ruled that the military courts could not be obliged to comply with an illegal habeas corpus ruling and that the case against the members of the CSJM must be heard by a military court.[(44)] The Supreme Court's call for the prosecution of the judges was rejected by the Executive Commision of the Public Ministry on September 4. However, the episode clearly revealed the precariousness of the situation of judges who upheld constitutional guarantees against the executive branch.[(45)]

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were

forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at

the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother

that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been

among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller

rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Curtailment of Powers of Constitutional Monitoring Bodies

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[46] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[47]

A December 1996 law[48] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[49] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[50] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[51]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven

majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as

"informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see

above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the

naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a

flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of

leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the

government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking

coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration

[the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is

always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Peru's constitution provides for autonomous public bodies to ensure that legislation complies with constitutional principles and that justice is administered fairly and in accordance with the law and human rights principles. These are, respectively, the main functions of the Constitutional Court and the Office of the Attorney General.[(46)] Following his April 6, 1992 "autogolpe," Fujimori dissolved the Constitutional Court (then known as the Court of Constitutional Guarantees (Tribunal de Garantias Constitucionales) and fired scores of prosecutors and judges, replacing them with temporary government appointees. Since the promulgation of the new constitution in October 1993, the Fujimori government has taken a series of measures to restructure the Public Ministry. After protracted delays, a Constitutional Court was finally appointed in June 1996.

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the

Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They

pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics

who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues,

so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the

indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly

magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was

killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Essential to the watchdog function of both these bodies is their capacity to make decisions without interference from the other branches of government and based on principled legal argument rather than political allegiance. As guarantors of the rule of law and redress against arbitrary acts by the executive branch, their efficiency and independence has a strong, if indirect, impact on violations of basic human rights, such as torture. Yet so far, neither body has exercised effectively the functions prescribed for it in the Constitution. The Constitutional Court, hamstrung from the moment of its appointment by a law that required the votes of six out of its seven members to declare a law unconstitutional, was further incapacitated in June by the controversial impeachment and dismissal of three of its members for issuing a ruling against the government. The powers of the Office of the Attorney General, who is elected by his peers, were diminished by a law passed in January 1997, which passed many of the post's key functions to a government appointee.

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human

Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in

plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19,

she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered

on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax

debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to

abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported

that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Attorney General of the Nation

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of

Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten

with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident.

The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a

number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its

independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while

the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In any aggressive policy to combat torture, the Office of the Attorney General would play a key role in his capacity as titular head of the Public Ministry. Apart from its responsibility for leading police investigations and formulating indictments, the Public Ministry is required to ensure that the procedures used during criminal investigations comply with the law. The autonomy of the Public Ministry is essential to its ability to exercise the dual role of prosecutor and guarantor, as when it it is called on to protect the rights of those detained arbitrarily or mistreated while in police detention. Public ministry officials, known as *fiscales,* must be present when suspects are interrogated or sign declarations, and must witness searches and post-mortem examinations. After arrest by the army, a detainee's first contact with a civilian is with a provincial prosecutor (*fiscal provincial*), who is expected to take over the investigation as soon as the detainee has been transferred to the custody of the National Police. If police violate the law, the prosecutor must initiate legal proceedings. To be effective, therefore, prosecutors are required to act autonomously, on no account simply as an arm of the police.

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting

requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[52] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[53]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[54] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[55] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[56] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[57]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present

when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was

tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a

police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for

her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)]

Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the

leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international

jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

During 1996 and 1997, the Fujimori administration created new bodies to supervise the reorganization of the administration of justice during the transitional period in which new permanent personnel were to be appointed to the judiciary and public ministry. These bodies included the Ejecutive Commission of the Public Ministry (Comisin Ejecutivo del Ministerio Pblico, CEMP) headed by the then-attorney general, Dr. Blanca Nlida Coln and composed of senior prosecutors.The CEMP was charged with administering the Public Ministry until December 31,1988, designated as the end of the transitional period. Dr. Coln, known to be close to President Fujimori, was appointed provisional attorney general after the April 6 coup.[(47)]

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988,

including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and

overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to

the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are

normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

A December 1996 law[(48)] prolonged the period of office of the members of the CEMP, until its functions terminated in December 1988, including that of its president, Dr. Coln, regardless of who was elected as new attorney general at the end of Dr. Coln's term in January 1997. The law shifted important powers formerly exercised by the attorney general to Dr. Coln as president of the CEMP. They included the power to prosecute Public Ministry officials for misconduct, disciplinary powers, and control over the public ministry budget. In January 1997, another law gave the CEMP's president the power to appoint temporary prosecutors.[(49)] They had been previously appointed by a plural body, the National Council of the Judiciary, as the constitution stipulates. These temporary prosecutors were eligible for appointment to the commission and could therefore influence Public Ministry policies directly.

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In January 1997, Dr. Miguel Aljvn Swayne, a jurist noted for his independent stance, was elected attorney general.[(50)] In an interview after his appointment, Dr. Swayne announced that he would devote himself to restoring the dignity and autonomy of his office despite the truncation of his powers.[(51)]

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to

get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client,

viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the

authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government,

demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and

mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Constitutional Court

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three

times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of

being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the

military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the

national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police,

and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned,

still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Under Article 201 of the Constitution, the Constitutional Court, an autonomous seven-member body, may declare legislation to be unconstitutional and annul it; it also decides appeals for habeas corpus petitions and protection of constitutional rights (*amparo*) when these have been denied by a lower court.

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three

times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of

being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the

military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the

national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police,

and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned,

still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Like the Public Ministry, the Constitutional Court has been kept under tight reins by the pro-Fujimori majority in Congress. The seven members of the court are elected by a two-thirds majority of Congress. Under the court's regulatory law, no legislation can be overturned as unconsitutional if two or more of the seven members of the court oppose it or abstain from voting on the legislation. This voting requirement provides an enormous advantage to the government in power if that government commands a significant majority in Congress, as does the Fujimori administration. The court itself divided on the voting-requirement issue, which opposition congress members swiftly impugned as unconstitutional.[(52)] Furthermore, the time period within which a law must be challenged as unconstitutional was drastically reduced from six years to six months, thereby making it impossible to challenge controversial decrees enacted in previous years, including the Amnesty Law of 1995.

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The moment of truth for the court occurred when it was called to rule on the constitutionality of Fujimori's bid to stand for election in the year 2000 for a third successive term. Article 112 of the Constitution allows a president to stand for re-election for an additional term, but does not permit a second successive re-election. On August 23, 1996, Congress passed the so-called "Law of the Authentic Interpretation of Article 112 of the Constitution," according to which periods of office before the constitution came into force in 1993 were not to be counted when tallying the number of terms served by a president.[(53)]

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them

reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the

investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for

five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000

soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was

already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks

where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are

associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On January 17, 1997, the court ruled, in an unopposed vote but with four abstentions, that the law was "inapplicable."[(54)] Following the legal reasoning that a decision on the "inapplicability" of a law required only a simple majority vote,[(55)] rather than the six-out-of-seven majority required for a ruling of unconstitutionality, the judges approved the ruling. C90-NM congress members angrily accused those who had voted for the ruling of exceeding their constitutional mandate.

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial

prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In response to a series of apparent acts of intimidation against the court members who voted for the ruling, opposition members of congress succeeded in pressing for the establishment of a congressional commission to investigate.[(56)] The commission reported on May 6, but instead of addressing the illegal pressures that it was mandated to investigate, it recommended the impeachment of the court's president, Ricardo Nugent, and judges Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo, who had voted for the ruling. The impeachment prospered in the government-controlled congress and the three judges were dismissed from the court. Although the impeachment of Nugent was not approved, he resigned in sympathy with his colleagues.

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered

in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics

who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues,

so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the

indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly

magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was

killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Although the legality of on legal grounds, it was defended by jurists of standing across the political spectrum. The mechanism of impeachment is limited in the constitution to "breaches of the constitution and for any crime (they) may commit in exercise of their functions or up to five years after ceasing in their functions." Since the regulatory law of the Constitutional court does not have constitutional status and the judges committed no crime, the impeachment appeared to be unjustified an possibly unconstitutional.

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and

tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of

hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in

plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19,

she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered

on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax

debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to

abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported

that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Protests and demonstrations of support for the judges spread rapidly across the country and there were strongly worded expressions of dismay from the judiciary, the attorney general, the People's Defender, the Catholic Church, the universities, and the great majority of Peru's newspapers. Announced a few days before the inauguration in Lima of the 17th Annual General Assembly of the Organization of American States, it also provoked concern by the Inter-American Commission on Human Rights in a June 5 press statement.[(57)]

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police

investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo

Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence

service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired.

Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the

Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint.

There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place

in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the

State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

IV. TORTURE IN ALTO YURINAKI

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly

dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had

stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the

interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean

armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

A stark and well-publicized example of the government's willingness to use torture as a counterinsurgency tactic occurred in early 1997, as authorities were engaged in confrontation with members of the MRTA who had taken over the Japanese ambassador's residence in Lima. Far from the scene of the showdown, soldiers detained, tortured, and abused men, women, and children they believed linked to the MRTA in Peru's central jungle region. Human Rights Watch/Americas participated in a delegation of nongovernmental human rights organizations that visited Villa Rica and Alto Yurinaki in early April. During this visit and in Lima we interviewed most of the released detainees, members of their families, provincial government authorities, and village leaders. From these interviews it was possible to reconstruct a clear picture of their detention and torture.

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the

31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[58] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[59]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[60] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[61]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[62]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[63] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force

him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present

when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was

regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police

asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the

SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a

campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in

cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Between February 24 and March 12, 1997, more than forty coffee growers, including eight minors, were detained by members of the 31st Infantry Division of the Peruvian army in and around Alto Yurinaki, province of Chanchamayo, in the Department of Junn. In a communique published in the national press on March 18, the army claimed to have uncovered a plan by the MRTA to attack and overrun the Alto Comaina No. 79 Counterinsurgency Battalion base in Villa Rica, which the group was said to have infiltrated.[(58)] The detainees, whose names, mugshots, and supposed aliases were also published, were accused of belonging to the MRTA's "Juan Santos Atahualpa Brigade." The communique also listed weapons and ammunition the army claimed to have discovered buried in a ravine in Chancarmaz, close to Alto Yurinaki.[(59)]

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered

in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics

who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues,

so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the

indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly

magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was

killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Gen. Jos Huerta Torres, commander of the 31st Infantry Division, produced the weapons for the first time on March 19 at the army base at Pichanaki, where the press photographed them. Neither the provincial prosecutor nor any of the accused were present at the place of their discovery, as the law requires. The "search" appears to have been pre-arranged at a site close to Alto Chancarmaz, where some villagers claimed to have been asked by soldiers for tools, apparently to dig the hole where the weapons were "discovered." Over the following three weeks, all but one of the detainees were released by DINCOTE for lack of credible evidence on which to base charges.

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the

dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and

"disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the

so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to

an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was

driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same*

ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro

Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Many of the detainees had been pointed out by masked informers accompanying the soldiers, held incommunicado for several days, and tortured repeatedly before being handed over to the police in Pichanaki.[(60)] As a result of persistent beatings and torture, they were forced to incriminate themselves and others. Several of the minors alleged that they had been forced to accompany the troops for several days to identify fellow villagers as terrorists, after being threatened with further torture if they failed to do so; others stated that they were interrogated by the police in the presence of the military officers who arrested them, and that the officers tried to make them stick to the statements they had made under torture in the military base. Some alleged that the provincial prosecutor who was present when they gave their statements to the police, as the law requires, was dressed in military uniform. His appearance in uniform alongside the military interrogators is likely to have deterred the victims from denouncing their torture. Others insisted that the district attorney was not present when they were interrogated.[(61)]

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had

been in Lima on that date and had returned to Alto Yurinaki afterward.[64]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the

dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison

for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station,

Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority"

under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published

damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving

Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary*

destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The cases of torture and abuse that occurred in Alto Yurinaki include the following:

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police

investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo

Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence

service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired.

Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the

Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint.

There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place

in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the

State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Paulino Solis Taype told Human Rights Watch/Americas that he was repeatedly beaten by the army until he agreed to sign a statement "recognizing" the stockpile of weapons:

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

I was so badly beaten and they said they would go on beating me if I did not sign the statement. I was so scared, and there was a man there in military uniform who told me to sign, and as he was in military uniform, I signed. Only later when I had signed the paper they told me he was the prosecutor.[(62)]

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them

reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the

investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for

five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000

soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was

already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks

where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are

associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Ins Marilu Avila Glvez, an agricultural student, was detained on March 9, 1997 in Alto Yurinaki by a patrol of the 31st Infantry Division from Pichanaki. Avila, together with other youths from her village, was arrested after being made to walk in line past a masked man who pointed her out by nodding his head. According to Avila and several other detainees, the masked man was one of three men who had been accused of infiltrating the army base for the MRTA to prepare for the attack and had been tortured to force them to act as "informers." Often, the men, when challenged by detainees, were unable to name the person they pointed out to the army.

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the

troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day

after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw

this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their

citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the

inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the

commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On the night after Avila's arrest, the chief of the patrol, whom she heard addressed as "Ronald," forced her to undress and tried to grope her genitals. For four days she and the other detainees were made to accompany the troops to various hamlets in the area, where more detainees were picked up. Avila and two other young girls, Loida Soline Dionicio Antazu (17) and her younger sister were pulled by the hair, dunked in water, and forced to undress and wash naked in front of a group of male soldiers.[(63)] Avila was accused of participating in an attack on the base at Villa Rica on February 24, but was later able to prove from a bus ticket stub and a passenger list that she had been in Lima on that date and had returned to Alto Yurinaki afterward.[(64)]

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water

torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[65]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[66]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[67] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[68]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal

would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[74]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[75] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his

vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to

contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel

Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army

hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality,

which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking

information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.*[*(137)*]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights

abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Seventeen-year-old Emerson Wistrecher Cnepa was arrested with Ins Marilu Avila Glvez on March 9. He was tortured by being dunked repeatedly in water for three hours, hung from the feet, and kicked in the stomach. He was taken by helicopter to Eneas, where the dunking continued for another hour, and then forced to walk looking for supposed weapons caches. He denied any knowledge of the weapons. He was returned to Alto Yurinaki at about 6 p.m. on March 10, and tortured again all night, including being subjected to water torture by the officer known as "Ronald." Shots were fired close to his head. He was tied upside down with an electrical cable and thrown into a tank filled with water, where he was forced to spend the night.[(65)]

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them

reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the

investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for

five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000

soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was

already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks

where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are

associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

According to Avila:

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television

interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As

noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The

subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority"

under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published

damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving

Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary*

destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

We were on the second floor and we could hear how they were half-drowning him. Afterwards, we saw that his whole neck was covered in blood because they had hung him with a light cable, and he had gashes on his wrists because they tied his hands with a rope. They pulled him by the hair and threw him into the water. His face was all swollen, and they had deprived him of consciousness about three times.[(66)]

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the

DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases

discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court

order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by

the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner

wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been

done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Wistrecher was transferred to the military base at Pichanaki and released without charge on March 14.

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten

with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[76]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident.

The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a

number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its

independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while

the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

A Channel 15 television interview with Wistrecher, recorded after his release, was shown on March 21. It included footage of the backroom of a small grocery store in Eneas where Wistrecher was tortured, showing a car battery and a receptacle still containing water mixed with detergent.[(67)] It also showed gaping wounds on his wrists, caused by the electric cables, and on his shoulder, caused by a blow from a rifle butt. These wounds were listed in a medical certificate issued by the hospital of La Merced.

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature

appears on the document. He was not allowed to read the statement.[69]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[70]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[71]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[72] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[73]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on

his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent

and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then

transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks,

forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Soldiers arrested fifteen-year-old John Izurraga Soto on March 10 in Eneas, together with his brother and sister-in-law, after four masked informers had pointed him out. He was one of several youths detained in Alto Yurinaki, held for several hours in the village school, and then taken by helicopter to the military base in Pichanaki. During the helicopter journey to Pichanaki, a colonel ordered him to throw himself onto the floor of the aircraft. Soldiers pushed his head through the open door and forced him to look down at the ground. When he said he knew nothing about MRTA weapons, they pushed his body half out of the helicopter and held him there in an effort to force him to talk. Soto was taken to the juvenile court in La Merced and released without charge on March 14.

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until

about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture

laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the

civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del

Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public

of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was

already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks

where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are

associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Flix Jorge Romero, a municipal employee, was detained on February 25 when on his way to make a bank deposit of money belonging to the municipality. He was taken to the army base in Pichanaki, where he was tied by the hands and feet, beaten around the head and body with sticks and rifle butts, and kicked in the stomach. He was also repeatedly dunked in a trough full of water laced with detergent, where he lost consciousness. While he was unconscious, a watch and the money he had been carrying were stolen. He was released later that day, after an interview with the commander of the base, Col. Juan Loayza Miranda.

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies.

Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said

to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit

military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States

for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the

murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM

congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in

the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives,

in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On February 27, Romero returned to the base to reclaim his money, and he was detained again. Soldiers tortured him from 5 p.m. until about 8 p.m., and from midnight until 5 a.m. The soldiers tried to force him at admit to collaborating with the terrorists and to incriminate Martn Morales, the owner of the local gas station. Jorge was made to lie in a ditch, which was filled with earth that covered his mouth. Shots were fired close to his head, his arms were cut with knives, and he was threatened with death. On March 2, he was taken to the DINCOTE headquarters in Oxapampa suffering from severe stomach pains and an infected wound in his left ear. After medical treatment in Oxapampa, on March 7 he was interned in the 2 de Mayo Hospital in Lima, where he received treatment. Romero showed Human Rights Watch/Americas scars on his wrist, knee, elbows, and stomach. He complained of numbness in his thumb and reduction of hearing in his left ear. He told Human Rights Watch/Americas he was convinced his second round of torture was a reprisal by soldiers at the base for his having reported the loss of the money.[(68)]

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[77] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of

being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the

military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the

national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police,

and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned,

still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Among the last prisoners to be released, on April 4, were Alfonso Rojas Colca and Jos Teofilo Huamn Navarro, members of the Yanesha indigenous community in Alto Yurinaki. Detained on March 9, they were taken to the military base in Pichanaki, where they spent the night. On the following day, they were taken back to Alto Yurinaki and, for the next three days, were forced to accompany the troops around the area, visiting both San Juan 71 and Eneas. Both were also tortured. Huamn told Human Rights Watch/Americas that he was tied with a rope, hooded, and hung by the feet from the beam of a house belonging to his neighbor, Pancho Daz. The soldiers used a cup of water to make him choke. Both Rojas and Huamn were later tortured together in a ravine in the hills, where they were repeatedly dunked head-first in a stream, with soldiers sitting on them to prevent them from moving. The soldiers wanted to know where the weapons were hidden, but neither had any idea. Huamn passed out. During the three days Rojas and Huamn were accompanying the troops, neither was given any food. After returning to the base in Pichanaki, both men were tortured again while being interrogated. Huamn said that the provincial prosecutor was not present when he was made to sign a declaration, although the prosecutor's signature appears on the document. He was not allowed to read the statement.[(69)]

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to

get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[78] but gave themselves up five days later and confessed.[79]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client,

viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the

authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government,

demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and

mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Martn Augusto Elguera, a Yanesha village official, was detained on March 10 at about 6:30 p.m. by some twenty soldiers who were waiting for him when he returned from work. He was taken to the village school that the army was using as an interrogation and detention center. Arriving at the school, he was immediately accused of being a terrorist by the commander, who hit him on the chest. He was put in the classroom, where fifteen others were being detained. Soldiers then took him to another room containing a receptacle full of water. When he said he knew nothing of the weapons, the commander said he was a tough nut, and pushed his head into the tank of water. He was kicked repeatedly in the stomach. After thirty minutes of this treatment, he gave in and pretended he was a member of the MRTA. The torture stopped. He was asked who he knew in the village. He said he knew two girls (Loida Dionisio and her sister, see above) and was forced to show the soldiers where they lived. The girls were arrested, stripped to their underwear, and dunked in the water. Later, the group was taken into the jungle to look for weapons. After a fruitless walk for several hours, with Elguera leading the way, the party returned to Yurinaki, where Elguera was forced to identify more of his fellow villagers. He and two other detainees, including Paulino Sols, were made to line up, together with a man in a ski-mask. He was told to nod or shake his head as the villagers filed past. On the following day, he and the detainees were transferred by helicopter to the military base in Pichanaki.[(70)]

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are

normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Alto Yurinaki episode received considerable coverage both in the press and on television. After its initial publicity on the dismantling of the MRTA column, which caused great distress to those unfairly and publicly accused of terrorism, the army remained silent and did not comment on the allegations of torture or on the inexplicable scale of the mistakes made. In a March 30 television interview, President Fujimori stated:

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

When situations like this occur, there may be detentions that are unjustified, which is regrettable, but unavoidable. Later investigations will determine if the detainees have committed an offence, and as this possibility is discarded, they will be released. Of course, the ideal would have been to have done a more careful follow-up, but given the urgency of the situation these detentions took place. . . . If torture has taken place it will be investigated and sanctioned. We don't want ill-treatment or torture or violations of human rights.[(71)]

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency

operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Despite Fujimori's assurances, to Human Rights Watch/Americas' knowledge no officers or soldiers were detained or charged in relation to the abuses committed in Alto Yurinaki, and, if an investigation was conducted by the army, its results were never made public.

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal

abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

V. POLICE TORTURE: LEGAL CASES

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are

normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The use of torture in Peru predates the outbreak of guerrilla violence in the 1980's and is not restricted purely to counterinsurgency operations. Police throughout Peru commonly abuse suspects and use torture, which may vary considerably in its gravity and effects, to obtain confessions and information used to find and convict the culprits in common crimes. Everyday cases of physical abuse of detainees by the police attract little attention from the press; it is rare for torture victims in criminal cases to make a formal complaint, and courts do not actively investigate such complaints when they are made, unless the ill-treatment is so severe that the victim dies. Peruvian law includes safeguards against police abuse, such as the legal obligation of prosecutors to be present during interrogations and when suspects sign their declarations. Prosecutors must also be present during searches and post mortem medical examinations. According to the Constitution, it is the attorney general's office, not the police, that is responsible for directing criminal investigations. However, in practice, prosecutors are frequently absent during interrogations or merely rubber-stamp declarations without being present when they are drawn up. If prosecutors do not enforce strict standards in the treatment of detainees, it is unlikely that the police will do so on their own. Police investigations still depend to a great extent on confessions to establish guilt; once a suspect has been arrested, procedures center on gaining a confession rather then establishing the truth. In the rare cases in which victims of torture, who are normally too afraid to denounce abuses, do come forward to file a complaint, prosecutors may open criminal investigations. Successful prosecutions, however, are few. Two major factors contribute to impunity for torture. When police are implicated in torture on police premises or in the course of duty, internal police tribunals, which are subject to the military penal code, often insist on jurisdiction. Further, police routinely fail to cooperate with the civilian courts, and police tribunals are more likely than civilian courts to acquit or give light sentences to those responsible for torture. Second, many prosecutors and judges still have temporary tenure, making them reluctant to energetically pursue cases that pit them against the police. Even when torturers are prosecuted, the weakness of Peru's torture laws leads to sentences far shorter than those for other crimes, such as robbery.

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage

passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in

Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try

them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the

Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks,

stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This

apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

An energetic and persistent prosecutor or judge, and victims or relatives willing to fight the odds, can lead to convictions. The three cases discussed below illustrate both the use of torture by the police and the difficulties faced by civilians who try to prosecute those responsible.

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As

noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The

subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority"

under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published

damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving

Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary*

destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Jhoel Huamn Garca

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge,

absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours

of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court

handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been

induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas

under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that

cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Jhoel Huamn Garca, a nineteen-year-old electronics student, was detained by a police officer, Edson Cndor Arredondo, at about 1:00 p.m. on May 26, 1995, in the city of Cerro de Pasco, department of Pasco. He was arrested in a classroom of the institute of higher education, where he was a student, and taken to the headquarters of the Department Against Terrorism (Departamento Contra el Terrorismo, DECOTE), a departmental branch of DINCOTE. Although Huamn had been accused by a robbery victim a few days before, the police did not have a warrant for his arrest. At midnight on the day of his arrest, he was carried naked by a policeman to the local hospital, where he was pronounced dead on arrival. A doctor who admitted Huamn and attended the initial autopsy later testified that a police officer tried to dress the victim after he had arrived at the hospital,[(72)] apparently in an attempt to mask the fact that police had stripped the victim during interrogation.

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death.

Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours

of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court

handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been

induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas

under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that

cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The provincial prosecutor did not attend the initial autopsy, as required by law. The doctors who carried out the exam, performed the day after Huamn's death, failed to collect needed medical evidence and concluded that the cause of death could not be determined.[(73)]

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage

passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in

Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try

them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the

Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks,

stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This

apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

At the insistence of the Huamn family's lawyer, a second autopsy was performed. On May 31, 1995, a forensic doctor from the Lima Morgue, local forensic doctors, and medical staff from the hospital carried out a detailed examination. Witnessed by the provincial prosecutor, they concluded that Huamn had died from a cerebral hemorrhage caused by multiple blows from a heavy object and internal abdominal injuries.

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[80] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[81] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia

Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several

journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Rolando Huere Or, a police officer who witnessed part of the interrogation and was later released on bail, testified that he had seen Huamn "in a state of complete nakedness, shivering with cold, and with staring eyes" while Edson Cndor Arrendondo interrogated him in his office. Cndor testified during the trial that Huamn had torn off his own clothes to show that he had no scars and therefore was not a criminal. According to Cndor, Huamn ignored Cndor's orders for him to put his clothes back on, so the officer continued to question the naked suspect. Cndor asserted that Huamn's bruises resulted from an accident. He (Cndor) "went on interrogating him, and when he asked him where the pistol was, he began to stumble and then collapsed, falling onto his back. . . ."[(74)]

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There,

she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina

group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months,

the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue

criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true

for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of

the message (leave the subject line blank).

After a one-year investigation conducted by a civilian prosecutor, in which the police did not seek jurisdiction, on July 17, 1996 the Second Chamber of the Hunuco Higher Court sentenced Edson Cndor to six years in prison on a charge of battery resulting in death. Another DECOTE agent, Wilson Germn Toralva Dvila, received five years in prison. Huere, who was detained on a lesser charge, absconded after being released on bail. On November 8, 1996, the Supreme Court increased the sentence on appeal to ten years in prison for both Cndor and Torralva, the maximum sentence in the Peruvian penal code for the offense of "battery resulting in death."[(75)] As noted above, the code does not contain a specific provision for torture, with penalties proportionate to the gravity of the offense.

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board

suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by

the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen.

Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to

overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were

involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious

terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Jos Eugenio Chamaya Pumacharis

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still

urging the civilian court to order the police authorities to bring the suspects to testify.[82]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[83] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[84]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[85] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[86]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military

officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and

troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who

promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so

because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's

residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Jos Eugenio Chamaya Pumacharis, a forty-seven-year-old taxi driver, was detained at 8 p.m. on September 22, 1995, while driving his vehicle in the La Molina residential district of Lima. The arresting police patrolmen had become suspicious that he and his two teenage passengers were about to commit a robbery. The police took the detainees to the police station in Santa Felicia, where all three were beaten and tortured in the courtyard of the precinct. The two teenagers, Katherine Keli and Carlos Casapaico, later testified to police investigators that police had blindfolded them and tied their hands behind their backs, made them lie on their backs on a lawn, and forced them to inhale water by dunking their heads in a bath filled with water. Medical examinations established that both had been also beaten with a hard object. Chamaya, who was beaten on the chest and also half-drowned, suffered a seizure and collapsed. Police paramedics who were called to the scene were unable to revive him.[(76)]

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The two officers responsible for the torture, Jos Zevallos Damacend and Aldo Sucno Luna, fled.[(77)] This was not the first complaint against Zevallos and Sucno. A previous complaint to the 30th provincial prosecutor by Arturo Valle Castillo that the officers beat him to get him to confess to a robbery he had never committed, was never investigated. "Escndalo en delegacin policial de Santa Felicia," *El Popular*, September 23, 1995.[(78)] but gave themselves up five days later and confessed.[(79)]

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a

corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

From the outset, the police judicial authorities insisted on retaining jurisdiction in the case on the grounds that the crime occurred on police premises and that the perpetrators were carrying out police functions at the time.[(80)] The 40th provincial prosecutor nonetheless opened a parallel investigation in the civilian courts on October 11, 1995, in which the two suspects were charged with homicide. The prosecutor quickly found herself stymied by the police judicial authorities, who ignored repeated requests to allow the suspects, now said to be under arrest in a military prison, to give their statements. The civilian judge responsible for the case refused to contest the authority of the police tribunal to try the case.[(81)] By May 1996--eight months after the crime--counsel representing Chamaya's widow was still urging the civilian court to order the police authorities to bring the suspects to testify.[(82)]

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th

criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under

military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the

Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks,

stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This

apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Eventually, one of the police suspects, Jos Zevallos, did present himself to the civilian court. The police insisted that Zevallos be returned to the custody of police judicial authorities after testifying. Zevallos, however, tried to abscond at the court building, was detained in a corridor, and, instead of being returned to police judicial authorities, was confined, at the judge's orders, in Lurigancho, a public prison.

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police

vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were

made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application,

filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration

[the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is

always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The public prosecutor finished her investigation and asked for a sentence of twenty years' imprisonment for homicide. However, before the date of the civilian court hearing, police justice authorities brought Zevallos to a police court hearing in Lima on September 17, 1996, where he was promptly sentenced to four years' imprisonment for "homicide" and "abuse of authority."[(83)] Since that time, the investigation in the civilian court has continued, but police judicial authorities have refused to respect at least five summonses from the civilian judge to appear in court hearings. The other police suspect has never attended a civilian court hearing or given evidence to the civilian prosecutor or judge.[(84)]

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the

interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean

armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Mario Jess Palomino Garca

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors

had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The

"Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press

reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and

human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Five officers of the National Police in the Brea district of Lima detained Mario Palomino, a thirty-seven-year-old skilled worker in plastics, at about 12:15 a.m. on March 23, 1996.[(85)] According to the testimony of his brother, Jos Enrique, Palomino had been attending a farewell party for his cousin, a major in the National Police, and left his brother's house at about 11:35 p.m. Mario Jess told his brother that he was going to walk back to his apartment on General Vidal street to see his children, a distance of some 200 yards. Palomino never

arrived. He was intercepted by a police patrol that was on the look-out for street drug dealers and taken off in a police vehicle, which continued to pick up suspects for another two hours. When Jos Enrique discovered in the morning that Palomino had not returned home, he went twice to the Brea police station, but he was told that the station's cells were empty. Later, a friend told him that several neighbors had witnessed Palomino being arrested by the patrol.

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[109] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[110] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [111]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[112] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[113] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been

among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller

rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Eventually, Jos Enrique found his brother at Lima's central morgue. According to a National Police document, Jose Enrique recalled,

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the

interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean

armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

With profound pain I confirmed that it was my brother. As I came close to his face to give him a kiss, I noted that there was blood mixed with saliva on his right lip (sic) and that there were tears of blood in his eyes, and that his wrists were a deep purple color. When I saw this I became more interested in inspecting my brother, and I noticed that his cheeks were swollen, that he had a bruise on the left side of his forehead. In fact, he had several signs of blows on his neck and face. I lifted his striped maroon-colored shirt, and he had bruises on his right arm. At that moment I was brusquely removed from the room by the guard, who had only just become aware of my presence. . . .[(86)]

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death

resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[87] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[88] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[89]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[90]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the

group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck,

on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of

human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The

ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The autopsy, performed on March 24, found multiple cuts and bruises on Palomino's back, pelvis, wrists, arms, right thigh, left knee, and forehead. It concluded that these signs were compatible with having suffered trauma, but that they were not the cause of death. Death resulted from a cerebral and pulmonary oedema that could have been caused by a variety of other factors.[(87)] The testimonies of the five agents who detained Palomino and of other detainees picked up that night establish that Palomino was beaten after being put in the police vehicle. According to officer Luis Alberto Snchez Vsquez, an officer with the surname Revolledo hit Palomino repeatedly with a flashlight on various parts of his body.[(88)] Other suspects picked up by the patrol car testified that they saw him in the police vehicle handcuffed, still lying on his stomach on the floor of the vehicle, unconscious, and smelling of alcohol. The police continued to board suspects until the vehicle was filled with as many as fifteen detainees. Several sat on Palomino's prostrate body, which smelled of excrement. One of the detainees testified that Revolledo joked, saying: "Look at this coward, he's even shit himself." He warned the others, "anyone who behaves badly will end up like him."[(89)]

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to

contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[91] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[92]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[93] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[94]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel

Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army

hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality,

which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking

information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[*(136)*] *The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.*[*(137)*]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights

abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

At 4 a.m., several hours after bringing Palomino the station, the police realized that he was dead. The officer in charge of the station, Maj. Vctor Manuel Cabrejos Pastor, told one of his subordinates to dump Palermino's body in the street in another precinct. The subordinate refused[(90)]

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

As in the Chamaya case, two parallel investigations were opened into Palomino's death, one in the 14th criminal court of Lima, and the other in a police court, the Sixth Permanent Court of the Second Police Judicial Zone. Despite insistent petitions from the victim's lawyers requesting that exclusive jurisdiction be established, if necessary by an appeal to Supreme Court, the civilian judge refused to contest the police court's jurisdiction. According to a police report dated April 2, 1996, four of the officers who participated in Palomino's arrest were in detention, under the authority of the 14th criminal Court of Lima.[(91)] In November 1996, the judge of the 44th criminal court in Lima, to whom the case had been transferred, charged Luis Alberto Aliaga Trigoso, Humberto Epifanio Revolledo Zevallos, Luis Alberto Snchez Vsquez, and Carlos Burt Morales Garca with "aggravated homicide" and "exposure to danger or abandonment of persons in danger." Vctor Manuel Cabrejos Pastor and Aliaga were also accused of attempting to conceal the incident. The trial has continued in the 44th criminal court and, at this writing, is currently in its final public summing-up stage. It also continues, so far without a verdict, in the police court. Since the military court can reach a final verdict more quickly than is possible in a civilian trial, which must go through several appeal stages before a final decision is made, civilian proceedings in the Palomino case are at risk of being aborted by a preemptive military court ruling. In other such cases, the Supreme Court has almost invariably supported the military court.

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were

made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application,

filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration

[the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is

always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

VI. DETENTION AND TORTURE OF ARMY INTELLIGENCE AGENTS

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged

from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication

he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He

returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television

the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In April 1997, Peru was stunned by reports of the torture and apparent summary execution of members of the country's military intelligence services. The victims, Leonor La Rosa Bustamante and Mariela Barreto Riofano, were both agents with the Army Intelligence Service (Servicio de Inteligencia del Ejrcito, SIE) who were suspected of leaking to the press information about illicit military intelligence activities, including serious human rights abuses.

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her

opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and

effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government,

demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and

mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Press reports based on the leaked information confirmed serious accusations against the military: army intelligence had been engaged in secret operations to carry out surveillance on and intimidation of opposition politicians and journalists; the SIE maintained installations in the basement of the army headquarters in Lima, which were used for the interrogation of terrorist suspects and in which torture was regularly practiced; and members of the death squad known as the Colina Group continued to frequent army premises although they were officially reported to have been discharged from the army.

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court

handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been

induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas

under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that

cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On April 6, 1997, "Contrapunto," a television program on Frecuencia Latina (Channel 2), featured an interview with thirty-six year-old La Rosa, filmed secretly in Lima's military hospital. La Rosa, who could walk only with assistance, described how she had been detained and tortured on two separate occasions by other army intelligence officers. The television camera clearly showed burns and scarring around the fingernails of her right hand, caused, she said, by electricity. She was initially detained on January 16, 1997, and tortured for five days in SIE headquarters in Lima, located in a basement of the General Command of the Peruvian Army (Comandancia General del Ejrcito Peruano), known as the Little Pentagon. She was then admitted to the military hospital with head injuries. She was discharged from the hospital on January 27 and given fifteen days of convalescent leave.

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect

rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the

allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

When La Rosa returned to work on February 11, she was re-arrested on the orders of Gen. Juan Yanque Cervantes, head of the Directorate of Army Intelligence (Direccin de Inteligencia del Ejrcito, DINTE), and taken back to the cellar of the Little Pentagon. There, she was again beaten and systematically tortured for a week. This time, the beatings provoked a vaginal hemorrhage. On February 19, she was again admitted to the military hospital. Following an emergency operation to stop the bleeding, she suffered respiratory failure on three occasions.[(92)]

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen

miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[95] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[96]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[97] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[98]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[99] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[100] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[101] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their

citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the

inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the

commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

From her hospital bed, La Rosa told reporters and visiting members of congress that her second interrogation had centered on the intelligence services's plans code-named Bermuda, Narval, and El Pino. The "Narval" plan involved an October 17, 1996 bomb attack on the local station of Channel 13 television in Puno, in which an SIE operative and former Colina Group member participated. The "Bermuda" plan was an initiative to intimidate television journalist Csar Hildebrandt, and the "El Pino" plan was designed to intimidate Heriberto Bentez, a lawyer defending Gen. Rodolfo Robles Espinoza.[(93)] La Rosa named three SIE officers as directly responsible for her torture: Com. Jos Salinas Susanaga, Maj. Percy Salcedo Sandoval, and Maj. Ricardo Anderson Kohatsu. She said that the interrogation and torture was supervised by the head of the SIE, Col. Carlos Snchez Noriega.[(94)]

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted

windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel

2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and

Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

La Rosa's startling allegations coincided with the macabre discovery of a corpse found in plastic bags on March 23 on a roadside fifteen miles north of Lima. Two days later, the parents of Mariela Lucy Barreto Riofano identified the body of their daughter,[(95)] an SIE agent and a friend and colleague of La Rosa. The body, found by a local teenager who saw two men dump the bags from a jeep with tinted windows, had no head, hands, or feet; they had been severed with surgical precision.

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court

handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been

induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas

under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that

cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Barreto had entered the Army Intelligence School in 1989, where she was a pupil and lover of Martn Santiago Rivas, then an instructor at the school. Rivas later became notorious as the head of the La Colina Group. By that time, Rivas had recruited Barreto to work in the group, and it is likely that she had intimate knowledge of the actions of the death squad. Rivas was detained and convicted for his role in the Cantuta killings and other abuses. In June 1995, a week after the passage of the amnesty law, Rivas walked free.[(96)]

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had

been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[102] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[103]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[104] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[105]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[106] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[107] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[108]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors.

For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was

killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Apart from their friendship and association as SIE agents, La Rosa and Barreto were linked by the fact that both were suspected of leaking information on secret intelligence operations to the press. In January 1997, both agents were placed under investigation by the inspector general of the army.[(97)] In February, La Rosa was cited by the daily *La Repblica* as one of three agents under investigation by the army Inspectorate General. According to the same article, Barreto was also being investigated and was reportedly detained and tortured by the same officers who tortured La Rosa.[(98)]

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new

espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The scandal provoked by the La Rosa and Barreto cases greased the normally rusty wheels of Peruvian justice. Within forty-eight hours of the revelations, the four intelligence officers named by La Rosa had been suspended, detained, and charged with "abuse of authority" under the Military Penal Code.[(99)] Army commander Gen. Nicols de Bari Hermoza Ros virtually admitted that the torture allegations were true.[(100)] In addition to this investigation, La Rosa was formally charged under military penal code with "disobedience" and "disloyalty."

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel

2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and

Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Civilian prosecutors also opened investigations in both the La Rosa and Barreto cases. The Attorney General of the Nation, Miguel Aljovn Swayne, stated in both cases that ordinary crimes were involved and ordinary criminal, not military, courts were entitled to try them.[(101)] The president of the Supreme Council of Military Justice, Gen. Guido Guevara, insisted that the La Rosa case fell under military jurisdiction because the events involved military personnel, took place in a military base, and were connected to the intelligence service. The army did not assert jurisdiction in the Barreto case.

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons

who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up,

bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's

Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the

provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

From the outset, the La Rosa case ran into obstacles in the civilian courts. Judge Gaby Mrquez of the Sixth Criminal Court rejected the indictment drawn up by the prosecutor on the grounds that no statements had been taken from the accused. In fact, the prosecutor had been denied access to the men by the military authorities and had not been allowed to interview La Rosa in the hospital, where the military was holding her incommunicado.[(102)] In June, Judge Mrquez applied to the Supreme Court to rule on the jurisdiction dispute by granting the civilian court sole competence. La Rosa's lawyer, Heriberto Bentez, who was also representing her in the case against her opened by the military justice authorities, publicly complained that military justice officials were preventing him from seeing his client, viewing the case file, and participating in the inquiries. The military officials claimed that Bentez's presence could influence the witnesses and impede the investigation. On April 19, Bentez was banned for four months from litigating in military courts for making comments in a national newspaper that were "insulting to the majesty of the military courts and offensive to the honor of the persons who represent them." The military judge promptly appointed an army lawyer to defend La Rosa in his place.[(103)]

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel

2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and

Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

La Rosa told Bentez in a letter from the military hospital that an army colonel acting on behalf of the army commander-in-chief had visited her in the military hospital and tried to persuade her to drop the accusation in return for a pension and a ticket to the United States for her and her family. She complained that she was being held in the hospital illegally without access to her lawyer, and that military officials were pressuring her into signing statements that she never made.[(104)] Harassment of La Rosa and her family did not stop there. In a case of police abuse that few believed to be coincidental, on June 27, police from the Nueva Esperanza precinct arrested La Rosa's half-brother Miguel Cabezudo Bustamante three blocks from the home he shared until recently with La Rosa and her family. Police asked him for his documents in the street and after he showed them his voting credentials they threatened him, hit him and told him they were going to arrest him for a breach of public order. He was taken to the station where he was beaten again. He was released at 4:30 p.m the following day with cuts to the head and forehead and a bruised back.[(105)]

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication

he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He

returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television

the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

On May 9, ignoring a petition lodged by Judge Mrquez for the military court to suspend the trial until the Supreme Court had ruled on the jurisdiction issue, the Supreme Council of Military Justice convicted the four officers to eight years' imprisonment after finding that they had tortured La Rosa with a blow-torch on her hands and ankles.[(106)] They also ordered them to pay La Rosa compensation of 5,000 soles (approx. US$ 1,900) apiece. The hearing was conducted in camera according to summary military procedures, depriving the public of any possibility of knowing who in the chain-of-command authorized or condoned the torture of La Rosa.

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the

SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a

campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in

cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

La Rosa remained in incommunicado custody in the military hospital until June 5, when the military authorities finally acceded to a court order for her discharge and transfer to a private clinic. During this time, in defiance of a habeas corpus writ on her behalf, she had been denied visits from her attorney, and allegedly intimidated and threatened by military officials who included members of the Colina group.[(107)] During the second week of June, the minister for women's affairs, Miriam Shenone, visited La Rosa in the clinic and offered on behalf of the government to pay for her rehabilitation in a hospital abroad. By October, La Rosa was still hospitalized in Lima, but was expected to travel to Mexico for treatment paid for by the government. The case against her in the military court, however, remained open.

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until

April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an

opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On August 6, a Supreme Court panel, four of five members of which were temporary judges, ruled that the Supreme Council of Military Justice should enjoy exclusive jurisdiction in the La Rosa case, thus effectively frustrating any public accounting. According to press reports, an inspection of the basement of the army headquarters in Lima, scheduled for August 8, which had been ordered by the civilian judge, was canceled.[(108)]

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further

disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements

paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The

journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to

the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

VII. INTIMIDATION OF JOURNALISTS AND OPPOSITION PERSONALITIES

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23,

1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage,

which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to

public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are

associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In parallel with executive branch actions undermining the authority and autonomy of the judiciary and legal bodies established to protect rights and the rule of law, journalists and politicians who brought government abuses to public attention were subjected to a series of physical attacks during 1997.

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean

armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[114]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[115]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In response to the public disquiet aroused by this violence, government spokespersons, including police authorities, the minister of the interior, and president Fujimori himself, claimed that ordinary criminals were responsible. Although all of the threats and attacks were made anonymously, and no group, government or otherwise, claimed responsibility, the explanation repeatedly offered by the government was unconvincing. If the attacks were the work of ordinary thieves, none of them were caught and brought to justice. In many cases, the authors left behind valuable items belonging to their victims, and in one case they burned a valuable car they had stolen. Some of those intimidated received specific threats warning them to stop meddling in topics known to be sensitive to the government. In addition, the attacks mirrored and accompanied open government harassment of key individuals in the media, including the owner of one of the country's most important television stations, and the management of its most vociferous opposition daily.

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court

handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[116] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[117]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been

induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas

under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that

cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Most, if not all, of the victims of this persecution were linked by having spoken out against the government or having published damaging information likely to affect its prestige and popularity. There was, indeed, a more specific link, which reinforced the impression shared by the victims of these attacks that they were the work of military intelligence agents. Many of the targets had contributed--as journalists, congressmen, former military officers, lawyers, and human rights activists--to exposing the activities of the so-called Colina Group. Evidently these individuals were perceived by the intelligence services as conduits to the public of the secret intelligence information allegedly leaked by La Rosa and Barreto. Other individuals were apparently targeted because of their public defense of negotiations between the government and the MRTA to solve the hostage crisis, a solution known not to be favored by army hardliners.

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further

disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements

paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The

journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to

the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Peru has a vigorous opposition press, and reports of official misconduct and sharp critiques of government policy are frequently aired. Indeed, the importance of the Peruvian media in revealing official malpractice is all the greater for the lack of an effective and independent judiciary. The torture cases described in this report were publicized largely as a result of valuable investigative work by a number of television stations and newspapers, such as Frecuencia Latina (Channel 2), Channel 15, the daily *La Repblica,* and the weekly magazine *Caretas*. The media have also played a key role in exposing corruption and dirty tricks both in the private and public sectors. For instance, Channel 2 published damaging information about the earnings of president Fujimori's advisor and de facto head of the national intelligence service, or SIN, Vladimiro Montesinos, as well as explosive revelations about wire-tapping by the SIN. In retaliation for its investigative reporting, the government cracked down on Channel 2, stripping its owner of Peruvian citizenship and effectively eliminating the news program that had aired the reports. *Caretas* carried in August a special report questioning the authenticity of president Fujimori's claim to Peruvian birth. The attacks documented below are troubling, not only because of the harm caused to the individuals affected, but because, taken together with cases of overt harassment, they represent a coordinated effort to silence public criticism.

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck,

on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of

human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The

ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

One of the most troubling recent incidents took place in April, when Channel 2 Television, also known as Latin Frequency (Frecuencia Latina) began to broadcast news about the Leonor La Rosa case. Channel 2 was not noted for reporting critical of the government until April 6, 1997, when its program Counterpoint (Contrapunto) broadcast the explosive feature on the torture of Leonor La Rosa and the murder of her army colleague, Mariela Barreto, mentioned above. During the months that followed, the government, with the evident and troubling support of the courts, resorted to one arbitrary measure after another to silence the station. Frecuencia Latina broadcast further disclosures highly damaging to the government--in particular to the intelligence services and the army--apparently based on information obtained directly from intelligence sources. The most startling was a Contrapunto investigation, revealed in July, which showed that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela and former United Nations Secretary General Javier Prez de Cuellar, who had run against Fujimori in the presidential elections of 1994. In a follow-up report on September 14, Contrapunto gave details of the equipment used, the main targets of the eavesdropping, and the location of some of the listening stations. It gave viewers a glimpse of secret intelligence documents describing the "Emilio Plan," a plan to monitor private telephone conversations of opposition leaders, in particular of Javier Prez de Cuellar. In February 1997, new espionage plans, known by the names of Halcn and Tucn targeted Javier Diez Canseco, Henry Pease, *La* Repblica Editor-in-Chief Gustavo Mohme, Csar Hildebrandt, and personalities of the political center. These journalists and congressman had all received death threats or been the victims of physical attacks.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication

he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He

returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television

the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

A naturalized Peruvian of Israeli origin, Baruch Ivcher Bronstein was the majority shareholder of Channel 2 television. On May 23, 1997, the combined command of the armed forces issued a pronouncement denouncing Ivcher for "using the medium of communication he owns to distort situations, twist facts, and broadcast comments from a clearly distorted viewpoint." Referring to the prestige won by the armed forces in defending the nation "on the internal as well as external front," the communiqu accused Ivcher of "seeking to damage [this] prestige with negative intentions that affect not only the armed forces, but the Peruvian people in general."[(109)] In previous months, the station had denounced surveillance by helicopter and inquiries and pressure from the tax authorities seeking to recover alleged tax debts.[(110)] When Channel 2 journalists publicly denounced this as harassment, causing public concern, the government denied that any investigation had taken place. [(111)]

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles

had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven

pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber,

special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Military justice authorities ordered Ivcher to appear to ratify his allegations of harassment. When Ivcher failed to present himself, they ordered his arrest for resisting authority.[(112)] Ivcher, then in Miami, expressed fears of returning to Peru because of death threats.[(113)] Meanwhile, articles published in the weeklies *S* and *Gente* accused Ivcher of associating with the commander-in-chief of the Ecuadorean armed forces and of supplying weapons to the Ecuadoreans during and after the 1995 armed conflict between Peru and Ecuador. Ivcher strenuously denied the accusations and alleged that they emanated from the SIN and from Vladimiro Montesinos. Almost simultaneously, the government announced a tightening of the laws against naturalized Peruvians, who then risked losing their citizenship if they committed offenses against the state, such as "terrorism" and "treason." The law was seen as aimed specifically at Ivcher.[(114)]

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had

advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of

the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

During the second week of June, the C90-NM block in Congress passed a motion "deeply lamenting" a report, also broadcast on Channel 2's "Contrapunto" program, about the allegations published in *S* against Ivcher. Channel 2 had sent reporters to Ecuador to discuss the allegations with senior military officers; the commander-in-chief of the Ecuadoran armed forces, Francisco Moncayo, stated in an interview that the documents published by *S* were false and that he did not know Ivcher.

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and

human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On July 13, a few hours after the broadcast of the first wiretapping expose, the official gazette *El Peruano* published a resolution issued by the Immigration Directorate (Direccin de Migraciones) revoking Ivcher's citizenship. The grounds stated were that his application, filed thirteen years previously, had irregularities, and that Ivcher had failed to renounce his Israeli citizenship. Apart from the striking coincidence that these alleged irregularities should come to light for the first time in the middle of a major campaign by the government

against Channel 2, the decision was legally suspect; under Peruvian law an immigration official does not have powers unilaterally to overrule a published government decree. It was also unconstitutional and violated a basic precept of international human rights treaties ratified by Peru regarding the right to nationality.[(115)]

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had

arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett

recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The final blow in the campaign against Ivcher came on September 15, 1997, when the Chamber of Public Law of Lima's High Court handed over control of Frecuencia Latina to its two largest minority shareholders, the brothers Samuel and Mendel Winter, depriving Ivcher of his right to remain at the helm of the station. The three judges who ruled on the case were temporary appointees nominated by a government official, after the Supreme Court had removed the titular judges from the bench.[(116)] The ruling, which was in response to an appeal by Ivcher's lawyers against a decision by judge Percy Escobar upholding the Winters' right to take over the station, allowed the new managers of the station to call a shareholders' meeting to appoint a new board of directors and restructure its staff and policy. The court also failed to overturn a decision by Escobar declaring legal the immigration decision stripping Ivcher of his Peruvian nationality, which his lawyers had challenged by filing a petition for protection of his constitutional rights (*amparo*). The High Court chamber refused on procedural grounds to accept a final appeal by Ivcher's counsel to the Supreme Court. Instead of ruling on the complaint, the Supreme Court panel, composed of six judges, five of whom were temporary appointees, referred it to the Constitutional Court. Until the Constitutional Court ruled on the issue, domestic remedies remained open and Ivcher was prevented from taking the case to an international forum such as the Inter-American Commission on Human Rights. Following the dismissal in June of all but one of its independent members, the Constitutional Court offered Ivcher no possibility of an impartial hearing.

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of

government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[118] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[119] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[120]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[121]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En*

Persona film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

At 7:30 a.m. on September 19, before most of the staff had arrived, the Winter brothers, accompanied by Judge Escobar, judicial police, and private guards, took over the premises of Frecuencia Latina. The staff of Contrapunto and other Channel 2 employees instantly resigned.[(117)]

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's

going to happen to you," said one.[122] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[123]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[124] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[125]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[126]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[127]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[128] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[129]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for

example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Although many observers believed the army high command to be the main force behind the actions against Channel 2, President Fujimori was more than a willing accomplice. He himself fired a personal broadside at the Peruvian press, and chose to do so during his inaugural address to the General Assembly of the Organization of American States on June 1: "Just as the press denounces cases of government corruption or breaches of the law by private individuals, there is, in some cases a concealment of the truth, a cover-up, bribery of certain journalists so that they attack those who are trying to eliminate corruption."[(118)] Fujimori named no names, but several journalists other than Ivcher felt themselves to be under pressure. Ricardo Palma Michelsen, managing director of Radio Miraflores, an opposition radio station, was arrested on May 23 for tax evasion. On the following day, Csar Hildebrandt was sued by a C90-NM congressman for allegedly using false documents in a televised investigation of an alleged network of local government officials who promoted Fujimori's candidacy in the 1994 elections.[(119)] During the second week of June, two television stations aired advertisements paid for by the president of the Council of Ministers and the Minister of the Interior that attacked the version of events related to Javier Diez Canseco and Blanca Rosales that had been published in the newspaper *La Repblica.* The advertisement accused the paper of a campaign to damage the prestige of the armed forces.

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a

family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[130] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[131] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[132]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W.

DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Other troubling cases include:

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son.

Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

At about 11 p.m. on March 16, 1997, Gustavo Saberbein, a former minister of the economy, arrived home with his wife and son after a family get-together in Lima. Saberbein had been held hostage at the Japanese ambassador's residence after the building was overrun by MRTA guerrillas the previous December. He was among the hostages released soon after the crisis began. Since his release, he had advocated publicly that the government negotiate an agreement with the MRTA to facilitate a peaceful solution to the crisis. As he drove into his driveway, his car was followed by a vehicle with five men inside, one of whom got out with a pistol drawn. Saberbein, who was already in the house, heard his wife's desperate shouts and drew a weapon he carried for his own protection. Heading back to the garage, which was in darkness, he found himself facing the gunman, who fired at him while other shots were fired from within the car. He returned the fire. The car then drove off with all its occupants aboard. Bullets had penetrated the door of the house, the car, and the inner wall of the garage. For three months prior to the attack, Saberbein had received threatening telephone calls from anonymous callers warning him not to make any more public declarations about the crisis at the residence of the Japanese ambassador and not to continue criticizing Fujimori's economic policy.[(120)]

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks,

stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This

apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On March 19, three days after the attack on Saberbein, unidentified gunmen kidnaped and beat three occupants of a Nissan sport utility vehicle owned by Javier Diez Canseco, an opposition congressman of the United Left (Izquierda Unida, IU). Diez Canseco had also been among the hostages released by the MRTA in the early days of the embassy occupation and had advocated negotiations with the MRTA. Diez Canseco was not in the car, but had made it available to his friend Patricia Valdez, a distinguished Argentinean academic and human rights advocate, to take her to Lima's Jorge Chvez Airport. Accompanying Valdez were Diez Canseco's chauffeur, Nilton Fernndez, and his bodyguard, Edilberto Arvalo. While they were waiting at an intersection, they were attacked by a group of armed men who fired shots into the air and at the vehicle and beat on its windows, forcing them to open the doors. Arvalo was hit by a bullet in the leg. According to Valdez:

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks,

stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This

apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Before lying down first on the seat and later on the floor of the jeep, I saw an individual on the right-hand side of the vehicle, very close to the window where I was, who looked like he was putting on or taking off a dark ski-mask, and he had on a flak jacket with the inscription "police" on it."[(121)]

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government,

demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and

mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The attackers entered the car, threatening and beating the three occupants and forcing them into the back seat. The three assailants then transferred the victims to another vehicle, which drove off. During the journey, the men took identity documents from Arvalo and Fernndez, interrogated them, and continued to hit and threaten them. "We are going to take you to the beach and then you will see what's going to happen to you," said one.[(122)] At one moment they operated a siren. Finally, they returned the documents to the driver and Arvalo and set all three victims down on the road opposite the army barracks of San Martn. The Nissan was found, a smoldering wreck, on March 22. Witnesses said that it had be burned by men with FAL rifles, accompanied by other men in a vehicle with tinted windows.[(123)]

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months

prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as

a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On April 3, the minister of the interior told Congress that common criminals were involved in the incident and that the police had arrested a gang of car thieves who specialized in off road vehicles. Fujimori reaffirmed the version that common criminals were involved. However, Edilberto Arvalo, the wounded bodyguard, later told police that photographs of the criminal suspects identified by authorities bore no resemblance to his attackers.[(124)] On May 26, the National Police presented another suspect. The man, Martn Or Yupanqui, claimed to have been hired as a driver by a gang of thieves known as the Commandos. However, neither Arvalo nor Fernndez recognized his appearance or voice. His confession contained five significant inaccuracies, raising suspicions that it may have been induced.[(125)]

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to

give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On April 1, four heavily armed men abducted Blanca Rosales, general editor of the daily *La Repblica,* at about 12:30 a.m. while she was driving home accompanied by the head of the paper's political section, Juan de la Puente. *La Repblica*, a left-of-center opposition newspaper, has campaigned for years against the illegal activities of the SIN and the Colina Group and was the first newspaper to reveal details of the Narval and Pino army intelligence plans. The paper also published details of the arrest of SIE agents accused of leaking information on the plans to the press.

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[*(135)*]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks,

stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[149] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This

apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

A blue Toyota car without license plates crossed the path of the journalists' vehicle, and its occupants forced Rosales to stop at gunpoint. There was a brief struggle during which Juan de la Puente managed to escape. One of the gunmen tried to shoot at de la Puente, but his weapon jammed. As in the Diez Canseco incident, the men split into two groups, one of which drove Rosales off in her own car, while the other followed in the other car. De la Puente tried to follow his editor in a taxi but lost sight of them and went to the police.

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true

for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of

the message (leave the subject line blank).

After a drive of about half an hour, during which the gunmen threatened to kill her several times, Rosales was released and abandoned, still in her car, in the Lima district of Barranco. The car was intact and no documents or credit cards were stolen.[(126)]

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

On June 25, 1997, Csar Hildebrandt, presenter of the television program *En Persona* and a celebrated critic of the Fujimori government, demanded that the interior minister guarantee his and his family's personal safety after his program broadcast revelations by La Rosa about a plan concocted by the SIE to kill him in December 1996. He also received a telephone call threatening the safety of his son. Within days of the revelations of the plans to kill him, three armed men broke into a house in Lima and beat and threatened an *En Persona* film crew that was preparing to film an interview. One of those attacked, Edwin Montoya, was a staff member of the People's Defender, or ombudsman.[(127)]

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[133] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[134]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[135]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[136] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

At about 7:45 p.m on July 1, 1977, three unidentified men intercepted Luis Angeles Laynes, political editor of *Ojo,* a daily newspaper, in the street close to his home in the San Miguel district of Lima. The men tried to force him into a waiting car but were unable to do so because passers-by went to his defense. The men got back in their car. Angeles, who was bleeding after being hit several times in the scuffle, tried to take the car's license number. One of the men got out and hit him over the head with the grip of his revolver. The journalist was assisted and taken to the hospital by local residents.

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles

had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven

pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber,

special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

According to press reports, Angeles had been receiving anonymous death threats by telephone at his home and office for six months prior to the attack. Other staff on the paper had also been threatened. His attackers showed no interest in the money, credit cards, or personal items he was carrying.[(128)] *Ojo,* a popular tabloid, had recently been publishing articles critical of the government, and Angeles had been covering the La Rosa case, according to his senior editor.[(129)]

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.[(130)] On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Former Gen. Rodolfo Robles Espinoza has been a frequent target of death threats because of his key role in exposing the involvement of the Colina Group in the La Cantuta disappearances and other abuses committed by the group.(130) On November 26, 1996, SIN agents violently abducted the general as he was leaving his home. They beat him and sprayed him with mace and took him to an army barracks where he was accused of slandering the armed forces, insulting a superior, and disobedience. The abduction and charges were due to public allegations made by Robles that implicated members of the Colina Group in the bombing of the Puno station of Global Television the previous October. Due to the international outcry provoked by Robles's arbitrary arrest, Fujimori admitted that an injustice had been done. Congress passed a law granting Robles an amnesty, but, at the same time, it passed another law preventing prosecution of the military tribunal that had ordered Robles's arrest that refused to comply with a habeas corpus writ ordering his release.

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"(131) Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.(132)

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.(133) Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.(134)

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.(135)

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.(136) The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have

subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] *Often, such killings took place in front of the victims' families and neighbors.*

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks,

threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In an attack that appeared meant either for Robles or to send him a message, four unidentified assailants attempted on March 26, 1997 to abduct Jaime Robles Montoya, the general's twenty-six-year-old son, who was driving the general's car. Robles Montoya was able to escape only by driving against the traffic up a one way street with his assailants in hot pursuit. After the incident, an unidentified caller rang the Robles house and repeated "death, death, death!" and "this time he escaped, the next time he won't!"[(131)] Robles Espinoza received a new set of threatening phone calls the evening of April 9, 1997, after he gave an interview on Channel 9 television.[(132)]

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same

ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[137]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[138] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[139]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[140] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[141] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[142] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[143]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[144] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[145] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[146] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[147] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[148] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro

Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

VIII. ABUSES BY ARMED OPPOSITION GROUPS

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Since the beginning of the armed conflict, Peru's two armed opposition groups, Shining Path and the MRTA, have consistently violated principles of international humanitarian law.[(133)] Such violations include the selective killing of non-combatants, indiscriminate attacks, forced recruitment, and, in the case of the MRTA, hostage-taking.[(134)]

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly

undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Shining Path, in particular, has gained a reputation for its glorification of violence, making a revolutionary virtue out of the cold-blooded assassination of noncombatants perceived to be its ideological enemies. Shining path has explicitly rejected respect for the principles of human rights, a stance that is amply displayed in the group's disregard for the laws of war:

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [the 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.[(135)]

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture,

the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Rather than concentrate its attacks on the armed forces or police, Shining Path has predominantly singled out civilians. Attacks on local government officials have been carried out systematically, with the evident intent of undermining the presence of the state in the areas under the organization's influence.[(136)] The organization has treated with special venom popular leaders such as community activists, trade union organizers, and leftist politicians, who are excoriated as reformists intent on diverting the masses from their revolutionary destiny. It has selectively murdered such civilians during its seventeen-year war against the Peruvian state. In recent years, the same ruthless logic has been applied to members of the organization itself who have advocated renunciation of the armed struggle and have subsequently become targets of threats and assassination.[(137)]

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was

killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] *The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.*[(141)] *Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"*[(142)] *Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.*[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] *It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."*[(145)] *The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.*

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] *Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.*

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] *The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."*[(148)] *On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.*

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] *Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.*

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The Shining Path has pragmatically avoided taking captives unless it intends to execute them. Executions frequently follow a mock trial held in front of forcibly assembled villagers. Descriptions of brutal killings of villagers committed with primitive weapons, such as sticks, stones, and machetes were common in press reports of political violence at the height of the conflict.[(138)] Often, such killings took place in front of the victims' families and neighbors.

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain

constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Shining Path has been reported to torture captured civilians before executing them. Prior cases of torture by Sendero Luminoso remain

vivid. On November 23, 1990, Javier Puiggrs Planas, an engineer and leader of the conservative Popular Christian Party (PPC), was killed by a Shining Path squad at his plantation in Vilcahuara, Huayra. As reported by Human Rights Watch/Americas:

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Having located Puiggrs, the senderistas brought him before the workers and berated him for mistreating them. The workers protested that Puiggrs was a decent man and asked the guerrillas not to kill him. While under interrogation, Puiggrs was tied hand and foot and mistreated physically, but when workers attempted to help him they were threatened with harm. According to a witness, the helpless captive was executed with four shots to the chest.[(139)]

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the

commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In recent years, the armed activity of the MRTA has been concentrated in the jungle region to the northeast of Lima, particularly in the provinces of Chanchamayo and Satipo in the department of Junn and Oxapampa in the department of Pasco. The organization has also carried out armed attacks and kidnappings in the capital. Decimated by arrests and internal divisions, the MRTA has increasingly undertaken attention-grabbing actions. A central element has been the taking of civilian hostages for ransom or for strategic objectives, in violation of international humanitarian law.[(140)] The most spectacular case was the occupation of the Japanese ambassador's residence on December 17, 1997, in which the MRTA held seventy-two hostages for 126 days. Although the embassy occupation took Peru and the rest of the world by surprise, the MRTA had carried out at least nineteen kidnappings since December 1984, according to the Combined Command of the armed forces.[(141)] Two of the victims, David Balln Vera and Fernando Manrique Acevedo, were killed in cold blood after being held in cells measuring six feet seven inches by six feet in the basement of a Lima hideout, chillingly referred to as

a "people's prison"[(142)] Balln was abducted on September 11, 1992, and found dead on February 24, 1994. According to DINCOTE, the MRTA killed him when his family failed to pay $5 million in ransom. The body was covered with bruises and weighed seventy-seven pounds less than before his capture.[(143)]

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

IX. UNITED STATES POLICY

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

A reading of successive annual State Department human rights reports shows that the Clinton administration is well aware of the extent and seriousness of torture in Peru. According to the most recent report, covering events of 1996, "Although the Constitution prohibits torture and inhuman or humiliating treatment, security force torture and brutal treatment of detainees remains common. This is as true for common criminals as it is for alleged subversives."[(144)] It continued, "Eye-witnesses and human rights monitors credibly reported that government security forces still routinely torture suspects at military and detention centers in some emergency zones, where certain constitutional rights are suspended due to high levels of terrorist activity."[(145)] The report also notes that the rape of female detainees continues to take place and, for the most part, goes unpunished.

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Apart from its annual country report, however, for most of the five-year period since Fujimori's April 1992 coup, the United States has refrained from strong public criticism of human rights abuses in Peru or forceful initiatives to address the problem. It has preferred to give the government the benefit of the doubt in its professed intent to restore and revitalize democratic institutions, and to use the methods of "quiet diplomacy" to further this objective. One notable exception was the formation in 1993 of a commission of international jurists to recommend reforms to Peruvian anti-terrorist legislation.[(146)] Even though the Fujimori government had agreed to the commission's establishment and composition, its report received a hostile and uncooperative response from the government, which accused the United States of meddling imperialistically in Peruvian affairs. Official criticism notwithstanding, the publication of the commission's report led to some significant, if limited, improvements. There is no indication that the United States' subsequent retreat to "quiet diplomacy" has had a comparable effect on human rights practices in Peru.

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

In recent months, with escalating numbers of assaults on the press and opposition and with revelations of cases of government torture, the United States ambassador in Lima, Dennis Jett, has begun to make forceful statements to the Peruvian media. On April 9, for example, Ambassador Jett told reporters who questioned him on the Leonor La Rosa case that a prompt investigation of the torture she suffered and the swift prosecution of those responsible were essential and would improve Peru's international image.[(147)] The ambassador also described the destitution of three Constitutional Court judges following their impeachment by the pro-Fujimori majority in Congress as "definitely a step backwards in the process of consolidation of Peruvian democracy." He noted, "democracy is always weakened when one democratic institution attacks instead of heeding the views of another."[(148)] On June 12, Ambassador Jett recommended that the Peruvian government cease to use military tribunals and "faceless courts" to try civilians accused of serious terrorist crimes.

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Human Rights Watch/Americas commends Ambassador Jett for these interventions. Though they have been poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that cooperation in other spheres, such as economic policy and anti-narcotics efforts, can never be traded for silence over human rights abuses.

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

However, the United States' role in Peru has been marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. In almost all the incidents documented in this report, which include torture, physical attacks, threats, harassment, and illegal electronic surveillance, the hand of Peru's intelligence services is discernible. Montesinos, who is reported to have worked for the Central Intelligence Agency, has been linked with the Colina Group and its egregious human rights abuses in previous years. He is widely seen in Peru as enjoying Washington's support, a notion that the United States has done nothing to dispel.[(149)] Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in human rights violations undermines the impact of public statements made by Jett and the State Department.

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Human Rights Watch/Americas

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of

the message (leave the subject line blank).

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Minges, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Jos Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is Brazil office director; Joel Solomon is research director; Jennifer Bailey, Sebastian Brett, Sarah DeCosse, and Robin Kirk are research associates; Steve Hernndez and Megan Himan are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Web Site Address: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

2. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1996 (Lima: Coordinadora Nacional de Derechos Humanos, 1997), pp.18-19.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with

its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

3. Fourteen occurred between 1992 and 1994 and seventeen between 1995 and 1996.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of

the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going

to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving

death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

4. These statistics were compiled for Human Rights Watch/Americas by the Institute for Legal Defense, based on questionnaires applied to 1,068 male and 170 female prisoners whose cases the organization has taken up between 1990 and April 1997.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article

makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in

which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

5. Centro de Estudios y Accin por la Paz, Perfil social y jurdico de los adolescentes infractores de la ley penal procesados por terrorismo" (Lima: Centro de Estudios y Accin por la Paz, 1996), p. 30.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan

Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the

Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of

attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN,"

Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

6. At the end of 1996, emergency regulations affected 18.5 percent of the national territory and 23 percent of the population. Coordinadora Nacional de Derechos Humanos, "Informe sobre la Situacin de la Tortura en el Per," unpublished report submitted to the United Nations Committee against Torture, April 1997, pp. 3-4.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights,

E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of

the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going

to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving

death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

7. According to the United States Department of State's 1996 human rights report on Peru, for example, "In Tocache 17-year-old Juan Gutirrez Silva was tortured repeatedly on July 6, when he refused to sign a confession for allegedly shooting at the girlfriend of a military officer. When hospitalized after ten hours of beatings, Gutirrez's skull was cracked, and he had been stabbed with a thin rod ten times in the chest area, and suffered cuts in the neck and left arm. Near death, Gutirrez was transported to Lima for medical treatment." United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), p. 542.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading

treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

8. Coordinadora Nacional de Derechos Humanos, Informe sobre la Situacin de los Derechos Humanos en el Per en 1994 (Lima: Coordinadora Nacional de Derechos Humanos, 1994), pp. 21-22.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article

makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in

which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

9. Coodinadora Nacional de Derechos Humanos, Carta Circular, Vol. 40, July, 1997, p.9.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for

themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

10. Article 4.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a

civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p.

744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver

de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

11. Article 5.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the

requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly

accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

12. "No one may be a victim of moral, psychological or physical violence, or subjected to torture or inhuman or humiliating treatment. Anyone may request immediately a medical examination of the affected party or of anyone who is incapacitated to request it for themselves. Declarations obtained by the use of violence have no legal value. Whoever resorts to it is criminally responsible."Constitution of 1993, Article 2 (24,h), Translation by Human Rights Watch/Americas.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc.

CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

13. "He who causes serious physical injury or damage to the health of another shall be punished with a penalty of imprisonment of no less than three years or more than eight. . . . When the victim dies as a result of the injury and if the agent could have foreseen this consequence, the penalty shall be no less than five years or more than ten." Penal Code (1991), Article 121. The wording of the article makes no distinction between violence resulting in injury occurring between private parties and injury inflicted by agents of the state acting in an official capacity.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the

requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly

accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

14. Article 376 states: "The public official who, abusing his powers, commits or orders any arbitrary action whatsoever against any person shall be punished with a penalty of no more than two years' imprisonment." The article refers generically to "any arbitrary act" without specifying its nature, seriousness, or whether violence was used.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in

litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's

widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

15. Peru ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 1988.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996,

Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the

Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the

parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

16. Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Peru, U.N. Doc. A/50/44 (Fiftieth Session, 1995).

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights,

E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of

the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going

to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving

death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

17. Commission on Human Rights, Fifty-Second Session, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, January 9,1996.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights

Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

18. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Peru ratified the covenant on April 28, 1978.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

19. Article 5(2) of the American Convention on Human Rights contains the same wording on torture as the ICCPR. Peru ratified the convention on July 28, 1978.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused

to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to

regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

20. Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito

investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

21. Article 55.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a

confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

22. ICCPR, Article 4.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to

review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE,

although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our

country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

23. See comments by the U.N. Special Rapporteur on Torture in his 1996 report on Peru. Commission on Human Rights, E/CN.4/1996/35, January 9,1996.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

24. Decree Law 25475.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she

refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the

terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

25. Decree Law 25659.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to

Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the

inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

26. In August 1996, after a long and emotional campaign by human rights advocates, President Fujimori established a commission to review cases of innocent prisoners and propose them for a presidential pardon. By November 1997, the so-called Adhoc Commission, composed of the minister of justice, the ombudsman, and a former prison chaplain, had secured the release of 227 wrongly convicted prisoners, but hundreds more applications remained in the pipeline.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal

action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

27. Human Rights Watch/Americas, "Peru: Presumption of Guilt, Human Rights Violations and the Faceless Court," Vol 8, No.5(B), August 1996, pp. 6-9.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it

for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls

within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

28. "The inquiries undertaken in this respect by military personnel, like the taking of statements by detainees in military bases or barracks, would be void of legal value. In addition, they would be converted into a source of human rights violations." Ronald Gamarra, Terrorismo: Tratamiento Jurdico, Instituto de Defensa Legal, Lima, 1994 (Translation by Human Rights Watch/Americas).

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the

requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly

accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

29. Ibid., pp. 199-201.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign

forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up

to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

30. One exception is the case of Jorge Cauracuri Coronado, who was abducted by army personnel in plainclothes on April 14, 1992 and held in secret for ten tays before being handed over to DINCOTE. In his statement to the judge, Cauracuri said that he had been tortured by the army and DINCOTE, and he exhibited the marks. Cauracuri's allegations were backed up by a medical certificate issued by the Institute of Legal Medicine. The prosecutor filed charges of "battery" and "abuse of authority" against police Capt. Jaime Len Bohrquez, before Lima's 32nd Criminal Court. Bohrquez, however, absconded, and the prosecution was suspended. Despite his substantiated claim of torture, Caurcari was convicted to ten years' imprisonment under the antiterrorism law. Memo to Human Rights Watch/Americas from the Comisin de Derechos Humanos (COMISEDH), April 8, 1997.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had

denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

31. In November 1996, the United Nations Human Rights Committee "deplored" the failure of the Peruvian government to comply with its recommendations on the amnesty law. The committee had called on the government to "review or revoke" the law, ensure that victims of human rights violations by state agents received compensation, and make sure that agents found guilty were removed from office. Committee of Human Rights, Examination of the Reports presented by States Party under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add. 72, November 8, 1996.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-

trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for

disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent

control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

32. Cdigo Procesal Penal, Decreto Legislativo No. 638. Article 14. Translation by Human Rights Watch/Americas.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by

members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

33. Thus, a robbery committed while a policeman carries out an arrest would be a common crime, because the value affected, the right to enjoy one's property, pertains to civil society and is identical regardless of whether the author of the crime is a policeman or a civilian. On the other hand, "disobedience" is a function-related offense, because the value affected, "discipline," is exclusively a military value. A disobedient worker in a civilian job could be fired, but not prosecuted.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to

Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the

inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

34. The Code of Penal Procedure currently in force dates back to 1940. The 1991 code was suspended indefinitely by the Fujimori government after the coup of April 1992. According to the Coordinadora, the main reasons for the suspension were the increased supervisory powers the new code gave to public prosecutors over the police. Another factor, according to lawyers experienced in litigating torture cases in civilian courts, was the clear delimitation of military justice in the code. Memo from the Coordinadora to Human Rights Watch/Americas, August 4, 1997.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a

confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

35. According to the draft law, "Ordinary criminal jurisdiction is not competent to hear: 1) Function-related crimes committed by members of the Armed Forces and the National Police, typified in the Military Penal Code."

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading

treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

36. Americas Watch, Peru Under Fire, p.28.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had

denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

37. Human Rights Watch/Americas, The Two Faces of Justice, p.16.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya

had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the

provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord"

with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

38. Chvez Peaherrera had testified that he had paid bribes to presidential adviser Vladimiro Montesinos to allow him to conduct drug-trafficking operations without interference. The government would not allow the allegations to be investigated.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights

Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

39. In November 1996, the CSJM refused to respect a habeas corpus petition granted by a civilian judge on behalf of retired Gen. Rodolfo Robles Espinoza, who had been arbitrarily and violently arrested by army intelligence agents.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the

requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly

accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

40. "Acuerdos inconvenientes del CJSM," El Comercio, May 11, 1997.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for

disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent

control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

41. Constitution of 1993, Article 139(1). This article states that "there may not exist or be established any independent jurisdiction, except for the military and arbitration (courts). Despite this explicit mention of military jursidiction as independent, military courts may not intrude in cases under ordinary jurisdiction. Their competence is restricted to purely military offenses."

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal

Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

42. As described below, army intelligence experts abducted former Gen. Rodolfo Robles in the street in November 1996 after he had denounced the participation of the Colina group in the bombing of a television station in Puno in October of that year. The army refused to heed a habeas corpus writ issued on his behalf and only released Robles after Fujimori intervened and granted him an amnesty.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

43. The Executive Commission of the Public Ministry was set up in 1996 to oversee the restructuring of the Public Ministry.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been

closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the

parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

44. Article 34(4) of the Organic Law of the Judiciary stipulates that the criminal chambers of the Supreme Court are competent to hear cases against members of the CSJM.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the

Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out

as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction."

DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website,

http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

45. Elba Greta Minaya Calle, a respected judge who has courageously defended human rights, was removed from the 37th Criminal Court in Lima after she had granted a habeas corpus writ in December 1996 on behalf of Robles. After public pressure, the president of the Superior Court of Lima reinstated her. In July 1997, the Minister of the Interior, Csar Saucedo Snchez, ordered Minaya prosecuted for terrorism and other crimes for granting a habeas corpus petition on behalf of a woman arbitraily detained by DINCOTE. Minaya had ordered the release of Carmen Cceres Hinostrozo after the criminal investigations department of the police detained her when she refused to sign a statement recognizing that police had discovered ammunition in her kitchen. She was later transferred to DINCOTE, although there was no warrant for her arrest. The accusation of terrorism against Minaya was subsequently dropped, and instead a disciplinary complaint against her was lodged with the judiciary's internal control body.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a

private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

46. Constitution of 1993, Articles 201-204 and 158-160, respectively.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN,"

Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

47. Coln has acquired a reputation as a fierce defender of Fujimori's authoritarian policies. In 1993, she refused to allow foreign forensic experts permission to assist in the exhumation of the bodies of the La Cantuta victims; she helped instigate arbitrary legal action against journalist Ricardo Uceda, editor-in-chief of S magazine, after he had published evidence of the La Colina death squad's involvement in the Los Barrios massacre; she threatened to prosecute judge Antonia Saquicuray Snchez for continuing to investigate the group's involvement in the crime despite the recently promulgated amnesty law. See Americas Watch, Peru, Anatamy of a Cover-Up: the Disappearances at La Cantuta, September, 1993, p.14, and Human Rights Watch/Americas, World Report (New York: Human Rights Watch, 1996), p. 118.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to

regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

48. Law No. 26695, of December 3, 1996.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in

which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

49. Law No.26738 of January 7, 1997, widely known as the "third Coln Law." The "first Coln Law" helped Coln to remain in the post of attorney general, when her temporary appointment expired, by giving her the necessary seniority to do so. The "second Coln Law" extended her period of office by discounting her time as a temporary appointee. A recurrent feature of the current administration in Peru has been its use of a comfortable parliamentary majority to pass laws couched in general terms but designed to affect one individual in particular. Another example was the "Susana Law" designed to prevent the presidential candidacy of Fujimori's estranged wife, Susana Higuchi.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board

of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

50. The original vote went against him due to a last-minute appointment by Dr. Coln of a new temporary senior prosecutor to the board of senior prosecutors responsible for the election. However, following widespread protests, Dr. Coln stood down.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

51. "Fiscal de la Nacin Habemos:entrevista a Miguel Aljovn," Ideele, No. 94, March 1997.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a

budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to

change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

52. Three of its members voted in December 1996 to support a motion of unconstitutionality against the voting requirement, presented by a group of thirty-six members of Congress. In its annual report for 1997, the Inter-American Commission on Human Rights criticized the requirement as one that allows for "overarching state authority, above the highest-level judicial bodies, allowing for the blatant interference of the Executive in the administration of justice and judicial reform," OEA/Ser.L/V/II.95, Doc 7 rev., March 14, 1997, p. 744.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the

provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord"

with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

53. Since Fujimori's first re-election was in 1995, this would make him eligible to stand again in 2000.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the

peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord"

with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

54. Two members of the court who strongly disagreed with the verdict published a minority view alongside it, despite having abstained from the vote.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the

terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

55. Article 4 of the law stipulates that "the court resolves and adopts decisions by a simple majority of votes cast, except to resolve the inadmissability of an inconstitutionality complaint or to issue a sentence that declares unconstitutional a norm with the status of law, in which case six votes in favor are needed." (Translation by Human Rights Watch/Americas.)

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a

Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

56. One of judges who abstained, Judge Jos Garca Marcelo, a former army chaplain, was suspected by Judge Revoredo of stealing a confidential draft of the ruling from her briefcase.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN,"

Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

Other members of the court who voted for the resolution also reported confidential documents missing. The draft in question appears to have found its way into the hands of a group of C90-NM members of congress, who sent a letter to the president of the court, Dr. Ricardo Nugent Lpez-Chvez, urging him to vote against the ruling. Judge Jos Garca Marcelo received a vote of censure in the court for disclosing its confidential deliberations.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no

incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

During the week of the ruling, Judge Revoredo alleged that her home had been under surveillance by naval intelligence agents posing as ice cream sellers and gardeners. She also said that a case against her concerning the importation of an automobile, which had been closed several years ago, was suddenly reopened by a judge in Callao, apparently in retaliation for her vote. On November 8, 1996, Nugent's police bodyguard was killed and two other police officers escorting his vehicle were seriously injured when gunmen attacked his vehicle. The press reported that the gunmen, who were attempting to kidnap a businessman when Nugent's car passed by, mistook it for a police vehicle and opened fire. These were not the only suspicious incidents involving members of the court. The Minister of the Interior, Gen. Juan Briones Dvila, denied that the attack was politically motivated. However, the incident remained unclarified. See "Qued al voto pedido para procesar a Delia Revoredo," La Repblica,April 9, 1997 and "Presidente del T.C. salva de balacera," La Repblica, November 9, 1997.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

57. The statement read: "Given the institutional importance of the Constitutional Court, the IACHR hopes that it will be restored to regular functioning as soon as possible, guaranteeing due respect for its independence, impartiality and autonomy of the other organs of the state, and consolidating its position as the most authoritative interpreter of the Constitution and human rights."

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

58. Comunicado Oficial No. 003/SZSNC-7, Ministerio de Defensa, Lima, March 18, 1997.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no

incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

59. "Ejrcito Peruano presenta armamento del frustrado ataque terrorista del MRTA," El Sol, March 20, 1997.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La

Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch,

1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

60. "Militares los torturaron para que admitieran ser del MRTA," La Repblica, March 26, 1997.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

61. El Sol, March 20, 1997. The article in the pro-military El Sol appeared on the day after a television report denouncing that the peasants had been tortured into confessing. The article claimed that all of the detainees had been interrogated in the presence of the provincial prosecutor and that none had denounced torture. Thus, it concluded, the army had "de-activated another plan by the terrorists to attack the armed forces for committing abuses against peasants, in which they hoped to use the foreign press that is in our country for the hostage crisis." (Translation by Human Rights Watch/Americas.)

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls

within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

62. Human Rights Watch/Americas interview with Paulino Sols Taype, Lima, April 4, 1997. Sols's allegation was confirmed by journalist Mara Elena Cornejo, who later interviewed the provincial prosecutor, Victoriano Nez Valdivia. He told her: "The thing is I don't have a budget for clothes, and as I was in civilian clothes and my shoes were dirty, the general lent me the uniform. Besides, it was 4 p.m. on a Friday and it was time for me to leave work, and I didn't have time to change. But I don't take pressure from anyone because I stand up to anyone like a man." Mara Elena Cornejo, "El Voltaje del Miedo, Caretas, No.1460, April 10, 1997, p.37.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

63. The soldiers tried to force Loida Dionicio to admit that she had been recruited to the MRTA by another detainee, Aurelio Leiva, and that he had raped her. A later medical examination in the DINCOTE showed that Loida was, in fact, a virgin. Leiva had been singled out as the "leader" of the MRTA column.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord"

with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

64. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading

treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

65. Asociacin Pro-Derechos Humanos, unpublished testimony of Emerson Wistrecher Cnepa, March 1996.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused

by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April

9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of

support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

66. Asociacin Pro-Derechos Humanos, unpublished testimony of Ins Marilu Avila Glvez, March 1996.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

67. Human Rights Watch/Americas saw and photographed the torture equipment during our visit on April 2, 1997.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

68. Human Rights Watch/Americas interview with Flix Jorge Romero, Lima, April 9, 1997.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319

and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru

(New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

69. Human Rights Watch/Americas interviews with Alfonso Rojas Colca and Jos Teofilo Huamn, Lima, April 4,1997.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos

Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

70. Human Rights Watch/Americas interview with Martn Augusto Elguera, Lima, April 9, 1997.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we

categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

71. "Salud sicolgica de rehenes est deteriorada," Expreso, March 31, 1997.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

72. Judge Onsimo Julio Vela Velsquez, Informe No. 003-96-1JEPP, expediente No. 55-95, January 23,1996. Pages not numbered.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

73. The forensic doctors asserted that it was impossible to determine whether the victim's lesions were self-inflicted or had been caused by a third party, but they went on, contradictorily, to say that the lesions had not been self-inflicted. Diligencia de necropsia en el cadver de Jhoel Huamn Garca. Ministerio Pblico Fiscala Mixta Pasco, date indistinct.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos

Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government

Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

74. Judge Onsimo Vela Velsquez, Expediente No. 55-95, page un-numbered.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos

Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government

Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

75. Penal Code, Book II, Title 1, Chapter 3, Article 121(3, ii).

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

76. Letter from Francisco Sobern, general coordinator of the Asociacin Pro-Derechos Humanos and Felicita Buenda Or, Chamaya's widow, to Luz Salgado Rubianes, president of the Congressional Human Rights Committee, November 9, 1995.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

77. "Policas enfran taxista en cmica," El Popular, September 23, 1995. According to the same source, their superiors were complicit in their escape.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly

accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

78. A police witnesses who was not identified told reporters that the officers responsible, apparently backed by the station chief, Carlos Snchez Gutirrez, hatched a plan to remove and "disappear" the body: "Lieutenant Zevallos tried to take the corpse away in the trunk of a private car, but because others tried to stop him, he began to shout like a madman, threatening to 'talk' about other abuses committed in the station. Later, he disappeared." "Jefes de cmica en Santa Felicia

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

implicados en crimen de taxista," El Popular, September 25, 1995.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the

Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the

parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

79. "Asesinos de taxista se entregan a las autoridades y admiten su crimen," La Repblica, September 28, 1995.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

80. According to a legal advisor to the criminal investigations department of the national police, the National Directorate for the Investigation of Crimes (Direccin Nacional de Investigacin del Crmen, DININCRI): "On this point, since the events took place in the installations of a police establishment and as a consequence of the carrying out of professional functions, the criminal conduct falls within the terms of Article 173 of the Constitution; for this reason the present advisor is of the opinion that, in application of Article 319 and 326 of the Code of Military Justice, it is of the exclusive competence of the military jurisdiction." Asesora Legal de la DININCRI-PNP, Dictmen no. 181-0AJ-DININCRI-PNP, September 25, 1995. (Translation by Human Rights Watch/Americas.)

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia

asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

81. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

82. Letter to the judge of the 40th Criminal Court, signed by Jorge Vega Fernndez, May 14, 1996.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the

prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his

role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

83. The civilian and military judges also conflicted over the place where Zevallos would serve his sentence. After his conviction by the military court, police authorities refused to return him to Lurigancho, sending him to a military prison instead. According to a memo from the national penitentiary authorities to the judge, "this decision has caused administrative problems in this department in that the prisoner was interned in a public prison, Lurigancho, with a detention order issued by your worthy court, and in his capacity as accused, and he should have been returned to the same prison." Memo to the judge of the 40th Penal Court of Lima from an official of the National Penitentiary Institute (INP), a department of the Ministry of Justice, September 17, 1996.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

84. Human Rights Watch/Americas interview with lawyer Jorge Vega Fernndez, Asociacin Pro-Derechos Humanos, Lima, April 8, 1997.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2

por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights

Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

85. "Policas de la delegacin de Brea asesinan a comerciante de lpidas," Expreso, March 25, 1996.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

86. Manifestacin de Jos Enrique Palomino Garca, document bearing the National Police stamp, dated March 26, 1996.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

87. Protocol de autopsia, Ref. Ofc. 384-96-14 FPPL-MP-FN, March 24, 1996.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly

accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

88. Ampliacin de la Instructiva del Inculpado Alberto Snchez Vsquez, July 18, 1996.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

89. Testimony of Jos Fiorentini Vergara, cited in summary of evidence by Judge Cecilia Bolack Baluarte of the 44th Criminal Court of Lima, November 6, 1996.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

90. Testimony of Capt. Jorge Manuel Cheng Kong Chu, March 29, 1996.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

91. Atestado No. 448 IC-H-DDCV, Delito Cometido por Funcionarios Pblicos- Abuso de Autoridad, April 2, 1996.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord"

with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

92. "Descuartizan a mujer agente del SIN y a otra la torturan y la internan en Hospital Militar," La Repblica, April 7, 1997; "El ejrcito investigaba por 'infidencia' a Mariella Barreto la agente descuartizada," La Repblica, April 8, 1997; "Una agente de inteligencia asegura haber sido torturada," El Comercio, April 7, 1997; "Congreso pide informe a ministros por denuncias de torturas en el SIN," Expreso, April 8, 1997.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading

treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

93. "Los planes al desnudo," La Repblica, April 7, 1997.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights

Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

94. "Descuartizan a mujer."

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

95. Human Rights Watch/Americas interview with Orlando Barreto Pea, father of Mariella Barreto, April 7, 1997.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

96. "El ejrcito investigaba por "infidencia" a Mariela Barreto."

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

97. Ibid.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his

role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

98. Ibid.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

99. "Enjuician a cuatro de SIE por caso de torturas," El Sol, April 9, 1997; "Cuatro militares enjuiciados por torturas," Expreso, April 9, 1997.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru

(New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

100. De Bari was quoted as saying, "[The case] has occurred in a circumstantial fashion [and] remains an isolated event that we categorically condemn." "Ejrcito remueve y detiene a cuatro oficiales," El Sol, April 10, 1997. (Translation by Human Rights Watch/Americas.)

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

101. "Fiscal de la Nacin ordena investigar," Expreso,April 9, 1997; "Casos deben verse en fuero civil; Fiscal de la Nacin habla claro," La Repblica, April 9, 1997.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru

(New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

102. DESCO, "Trabas al Fiscal?," Resmen Semanal, April 9-15, 1997.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told

Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press,

1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

103. On May 8, this lawyer was also fired by the military justice authorities for giving an unauthorized interview to the press. "Agente SIE se desmaye en juicio," Expreso, May 9, 1997.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

104. "Coronel EP por encargo del general Hermoza me propuso retirar denuncia de tortura," La Repblica, May 12, 1997.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general

Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

105. "Detienen y golpean a hermano de Leonor La Rosa," La Repblica, June 29, 1997.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

106. This was reported in the summing-up of the military prosecutor, Gen. Ral Talledo Valdivieso. "Agente Lenor La Rosa sufre desmayo durante audiencia y tribunal militar la suspende para hoy,"La Repblica, May 9, 1997.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

107. Asociacin Pro-Derechos Humanos, "Noticias," June 6, 1997.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading

treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

108. DESCO, "La frustracin cronometrada," Resumen Semanal, August 6-12, 1997.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

109. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos

Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government

Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

110. "El SIN estara investigando a directivos de Frecuencia Latina," El Comercio, April 7, 1997; "Denuncian presiones contra Canal 2 por informes periodsticos del SIN," La Repblica, April 7, 1997; "Por difundir reportaje sobre torturas presionan a Canal 2," La Repblica, April 10, 1997.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el

Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

111. The government interfered with the police to silence unwelcome criticism. In August 1997, police captain Julio Salas Cceres told Human Rights Watch/Americas that he had been ordered by his superiors to open an investigation--at the SIN's request, they told him--into alleged customs duty evasion by Channel 2. He said that his superiors had visited Vladimiro Montesinos, the SIN's de facto head, and received his personal congratulations for their work. However, when news of the investigation caused a public outcry, the government backtracked and promptly denied its existence. Alone, Salas refused to go along with this pretense; for refusing to deny his role in the investigation, he was hauled up before his superiors, threatened, physically assaulted, and summarily dismissed from the

force. Salas and his lawyer were subjected to death threats, and his wife was attacked in the street by a man who told her she was going to "die like a squashed rat." Salas left the country in fear for his safety.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

112. Asociacin Pro-Derechos Humanos, "Noticias," May 24, 1997.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly

accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

113. DESCO, "Canal 2: Winter se cuadra," Resumen Semanal, May 28-June 3, 1997.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

114. Asociacin Pro-Derechos Humanos, "Noticias," May 29, 1997.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

115. Article 2(21) of the Constitution stipulates that everyone has a right "to their nationality. No one may be stripped of it." Article 20(3) of the American Convention on Human Rights holds, "No one shall be arbitrarily deprived of his nationality or of the right to change it."

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

116. The judges were transferred after being accused by the army of unlawfully granting habeas corpus petitions in favor of general Rodolfo Robles, after his detention by SIE agents in November 1996.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent

control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

117. Contrapunto's director, Luis Ibrico, told reporters: "We hit the nail on the head, we touched the spot, and the mask dropped. Something that before had been debatable has become obvious. That was the merit of Contapunto and the reason for its destruction." DESCO, "Ibrico: dimos en el clavo," Resumen Semanal, September 17-23, 1997.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

118. DESCO, "Fujimori agresivo," Resumen Semanal, May 28-June 3, 1997.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

119. DESCO, "Detencin de Ricardo Palma; Hildebrandt tambien denunciado," Resumen Semanal, May 21-27, 1997.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru

(New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

120. This account is extracted from a letter from Gustavo Saberbein to Francisco Sobern, director of the Asociacin Pro-Derechos Humanos, a nongovernmental human rights group, March 24,1997.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

121. Testimony of Patricia Valdez, sent to Human Rights Watch/Americas, March 25, 1997.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del

congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

122. Lima's deserted beaches are a well-known site where the police torture victims, sometimes half-drowning them in the ocean.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

123. DESCO, "Diez Canseco: Un Acto del SIN,"Resmen Semanal, March 19-25, 1997; "Hermanos Huaman no incendieron carro del congresista Diez Canseco," La Repblica, April 9, 1997.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

124. "Fujimori afirma que delincuentes comunes atentaron contra Diez Canseco," La Repblica, April 7, 1997; "Hermanos Huaman no incendieron carro."

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press,

1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

125. Nota de prensa: Oficina Parlamentaria del Congresista Diez Canseco, Lima, 27 de mayo, 1997.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

126. Human Rights Watch/Americas interview with Blanca Rosales, Lima, April 7, 1997.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

127. Amnesty International, Urgent Action, UA 201/97, AI Index: AMR 46/27/97, July 8, 1997.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human

Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

128. "Un nuevo atentado contra la prensa independiente," La Repblica, July 2, 1997. Received by internet.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch,

October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

129. DESCO, "Golpean a periodistas," Resmen Semanal, July 2-8, 1997.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

130. Robles' role in exposing the Colina group is described in his book. Rodolfo Robles, "Crimen e Impunidad: El "Grupo Colina" y el Poder (Lima: Asociacin Pro-Derechos Humanos, 1996).

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press,

1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

131. Human Rights Watch/Americas interview with Rodolfo Robles Espinoza, Lima, April 10, 1997.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

132. Ibid.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

133. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Human Rights Watch/Americas applies these standards where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits the mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed hors de combat for any reason. The following are strictly prohibited: violence to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording guarantees of due process. Common Article 3 states explicitly that its application does not affect the legal status of the parties to a conflict, nor does it confer any special status on the armed opposition.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

134. Human Rights Watch/Americas has consistently reported on violations of the laws of war by the armed opposition as well as government forces since our first report on Peru in 1984. See Americas Watch, Abdicating Democratic Authority: Human Rights in Peru (New York: Human Rights Watch, 1984); A Certain Passivity: Failing to Curb Human Rights Abuses in Peru (New York: Human Rights Watch, 1987); Americas Watch, A New Opportunity for Democratic Authority: Human Rights In Peru (New York: Human Rights Watch, 1985); Americas Watch, In Desperate Straits; Human Rights in Peru after a Decade of Democracy and Insurgency (New York: Human Rights Watch, 1990); Americas Watch, Tolerating Abuses: Violations of Human Rights in Peru (New York: Human Rights Watch, October 1988); Americas Watch, Peru Under Fire, Human Rights Since the Return to Democracy (New Haven: Yale University Press, 1992);Americas Watch, Human Rights in Peru One Year after Fujimori's Coup (New York: Human Right Watch, April 1993).

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

135. Above the Two Hills: Counter-Insurgency War and its Allies, document attributed to the Shining Path's founder, Abimael Guzmn, written in 1991, cited in Amnesty International, "Peru: Human Rights in a Time of Impunity," May 1996, AMR 46/01/96.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

136. From January through October 1989, the Shining Path assassinated forty-six mayors, and a further 263 resigned after receiving death threats. See Americas Watch, Peru under Fire: Human Rights Since the Return of Democracy (New Haven: Yale University Press, 1992), p. 65.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord" with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

137. For several years, Shining Path has been split after its imprisoned founder and leader Abimael Guzmn called for a "peace accord"

with the government. A faction known as Red Path, led by Oscar Ramrez Durand, aka "Feliciano," has openly rejected these overtures and was

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

believed responsible for a number of assassinations of advocates of the peace strategy in 1996.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

138. Americas Watch, Peru under Fire, p. 66.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

139. Ibid, p. 69.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

140. The taking of hostages is specifically prohibited in Common Article 3 of the four Geneva Conventions of 1949. The MRTA has also violated Common Article 3 by resorting to assassinations, selective executions, and indiscriminate attacks.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

141. Comando Conjunto de Las Fuerzas Armadas del Per, "La Verdadera Historia del MRTA," Comando Conjunto's internet website, http://ekeko.rcp.net.pe/CCFFAA, March 18, 1997.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

142. Ibid.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

143. Human Rights in Peru One Year after Fujimori's Coup, p.17.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of

support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

144. United States Department of State, Country Reports on Human Rights Practices for 1996 (Washington, D.C.: U.S. Government Printing Office, 1997), pp. 541-542.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

145. Ibid., p. 542.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

146. The commission was known as the Goldman Commission, after its chair, Robert Goldman.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

147. "Embajador EEUU: 'Sancin a Culpables,'" Expreso, April 10, 1997.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

148. DESCO, "Las opiniones del embajador," Resmen Semanal, May 28-June 3, 1997.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.

149. In October 1996, the Fujimori government used the visit to Lima of Gen. Barry McCaffrey, director of the White House Office of National Drug Control Policy, to launder the image of Montesinos, who has repeatedly been involved in scandals, including allegedly accepting pay-offs from a renowned drug-trafficker. U.S. officials took insufficient steps to publicly distance themselves from Montesinos during McCaffrey's visit, even while the press characterized his meetings with Montesinos, who is rarely seen in public, as a gesture of support. See Human Rights Watch, World Report 1997, p. 120. Since the date of McCaffrey's visit, evidence of the illegal activities of the Colina Group, said to have been directed by Montesinos, has continued to mount.